

Your Land, Your Legacy

Deciding the Future of Your Land to
Meet the Needs of You and Your Family



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INTRODUCTION

Estate Planning Is for *Every* Landowner

Your land is a part of your legacy. You have been a good steward of your land, carefully making decisions about its use. Deciding what will happen to your land after you are gone is the next critical step of being a good steward. In fact, it may be the most important step you can take as a landowner—not just for your own benefit, but for the benefit of your family, your community, and, of course, your land. Who will own your land and how will it be used? What will your legacy be?

An **estate** is the total of all of your assets, which may include your land, house, bank accounts, stocks, and bonds. An **estate plan** ensures that your assets are distributed in a way that will meet the financial and personal needs of you and your family. Although the phrase “estate plan” may bring to mind an image of a single all-encompassing document, an estate plan is best thought of as a process that includes the development of documents (such as a will) and tools (such as a conservation restriction) that achieve your goals when they are implemented together. Estate planning is not just for the wealthy or for those who own “estates”—if you own land, then estate planning is a necessary and valuable step to ensure that the legacy of your land is a positive one.

Successful estate planning will help you meet your financial and personal goals and meet the needs of your family. Successful estate planning will often avoid some taxes, increase the assets given to your family, ensure financial security for you and your family, address your family’s goals for owning the land, and maintain good family relationships. Failure to plan your land’s future may result in negative financial consequences and can lead to tension or animosity among your family members that can last long beyond your passing.

Your land is likely one of your most valuable assets, especially if you have owned it for a long time and it has greatly increased in value. However, land is not like other assets. Because land can be connected to memories, experiences, and feelings not normally associated with assets such as stocks and bonds, your land may also have significant personal value. Deciding what to do with your land brings with it the challenge of providing for both these financial and personal needs.

Some of your family may be interested in receiving personal value from the land by keeping it in the family and in its current or natural state. Others may be interested in receiving financial value from the land or in obtaining a piece of land to build a home. And, of course, it is also possible that your family may want or need a little of both.

The good news is that land is a flexible asset that lends itself to creative solutions for gaining financial and personal value. Whether your intention is to keep the land in your family or not, it is possible to develop a solution to meet your needs and goals as well as those of your family.

About this Publication

Estate planning is a broad topic. This publication focuses on the elements of estate planning that deal directly with keeping land in its natural, undeveloped state. Most people already understand their option to subdivide and develop their land. However, many people are not aware of their land conservation options, the variety of helpful legal tools used for transferring land, and how using them separately or in combination may produce a result that better meets one’s goals.

Making decisions about the future of your land may seem overwhelming. It can be difficult to initiate conversations with your family, to sort out the different professionals involved in estate planning, and to know how to take the first step. Don’t become overwhelmed—the hardest step is often the first one. This publication can help you get started.



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The good news is that land is a flexible asset that lends itself to creative solutions for gaining financial and personal value.



These steps are intended to help you share your intentions and to gain a sense of your family's needs and desires for the land.

It is up to you to decide to what extent you want to involve your family in determining the future of your land. Every family's situation is different.

If you want to engage your family in some way (and most landowners who have involved their family in the planning process are glad they did), **Section One** of this publication includes information and recommendations for using family communication to help develop shared goals for the future of your land. These steps are intended to help you share your intentions and to gain a sense of your family's needs and desires for the land. If you have other, non-family beneficiaries (for example, friends and charities) who are a part of your estate plan, many of the family communication steps and information in this publication may be extended to them.

Section Two contains specific information about the professionals, tools, and next steps you may need during the process of putting a plan together and into action. This information will be useful whether or not you decide to involve your family in the estate planning process.

Section Three contains the Deciding the Future of Your Land Checklist to help you take the first step in making plans for the future of your land and to continue moving forward with that plan. There is a list of professionals who can help you in this planning process in this checklist as well.

SECTION ONE

Determining Your Family's Needs *and* Developing a Shared Goal for Your Land



Though it may be tempting to move past this section and delve into the more concrete parts of estate planning, family communication can play a very influential role in a successful estate plan. If you do want to include your family and ensure that your decisions about the land will meet their needs, good family communication is crucial.

Having a family conversation about the future of family land can be very difficult. Talking about your eventual death can be uncomfortable, and it is often compounded by family dynamics that make it difficult for families to have these kinds of conversations. Unfortunately, there are countless examples of landowners who put off a decision about their land until it is too late, *as in Alma Jones's story found on page 11.*

Beginning these conversations now is necessary to be able to agree on answers to questions regarding the future of your land (for example, What are the goals you will be trying to achieve? What are the methods you will use to meet these goals?). Involving your family from the beginning and getting their buy-in to the plan can make for a better solution for all those involved and help avoid conflict when you are gone. An example of the importance of good family communication is illustrated by *the Riley family story found on page 7.*



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If you do want to include your family and ensure that your decisions about the land will meet their needs, good family communication is crucial.

Holding a Family Meeting

An excellent first step to engaging your family in deciding the future of your land is to convene a family meeting. The goal of this meeting, as with all future communications, is to create an open, honest, and respectful conversation in which family members can communicate their personal feelings about the land and their needs. By doing this, you can gain a better understanding of the needs of your family, allowing you to develop an estate plan to address them without having to guess or to “let the kids fight it out” after you are gone.

Tips for Conducting Your Meeting

Below are some tips for holding a comfortable and productive family meeting. These suggestions are meant as a guide. You know your family best. Use the tips in the way that will be most effective for your family and the level of involvement your family will play.

When?

It often takes years to complete the estate planning process. Waiting until your family is grieving or dealing with health issues is not the time to start planning. Grief and stress can derail and complicate the decision-making process. The time to start is now!

Ideally, your family meeting will not coincide with a holiday or family celebration. Separating the traditions and pressures of a holiday or family celebration from the business of estate planning

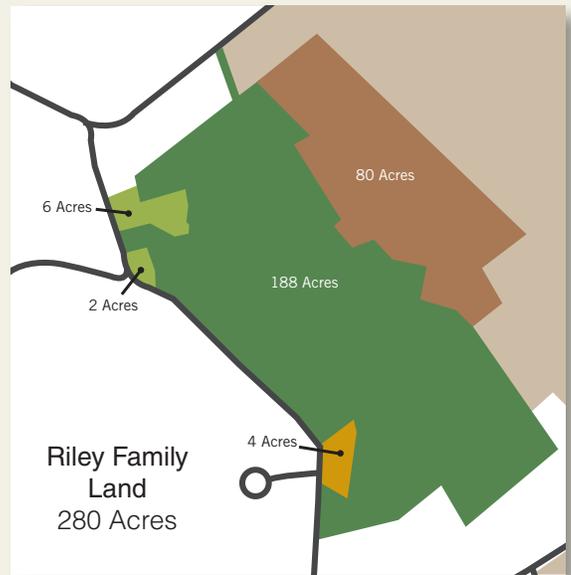
Tools used:

- Sale of land to a conservation agency
- Donation of a conservation restriction (CR)
- Reserving house lots for family members

Communicating your wishes for your land to your heirs is a critical first step in estate planning. Even more importantly, your wishes should be codified in your will. Luckily for Beatrice Riley, because she clearly and persistently communicated her wishes to her heirs, they worked hard to carry her wishes through, even in the absence of a legal imperative in her will.

Beatrice owned a house with 280 acres of land in Barre, Massachusetts. She loved the land and tried to instill a strong land ethic in her grandchildren by bringing them blueberry picking, canoeing, fishing, and jeep riding on the trails. As the years passed, she would often talk to her family members about the land and ask them if they would care for it like she had. When she grew older, two of her three grandchildren moved back to the house to take care of her. She became very ill, and when her death was imminent, the grandchildren needed to make a decision about what to do with the property. There was no direction in the will. Fortunately for Beatrice, one of her grandchildren who had power of attorney wanted to follow her grandmother's wishes to protect the land. Still, the family was concerned that the estate, capital gains, and other taxes would be too great to bear, forcing them to sell the land for development. All three grandchildren had a number of conversations about the future of the land and agreed that they wanted to honor their grandmother's wishes and conserve the land, but also hoped to be able to afford to live there with their families by somehow reducing the taxes associated with the inheritance.

The family attorney who had a long-time relationship with Beatrice wasn't sure how best to help the grandchildren conserve the land, so he recommended that they contact Mount Grace Land Conservation Trust. The land trust was able to help the family understand their options and advised the family attorney. Because the Riley land had important natural resource values, the Massachusetts



- Original Family Homestead
- Home Sites for Grandchildren
- Donated Conservation Restriction
- Sold to State Conservation Agency
- Other Nearby State Conservation Land
- Roads

Department of Conservation and Recreation purchased 80 acres of land to protect the water quality of the Quabbin Reservoir. But no funding source was available for the remaining 200 acres. To protect the rest of the property, the family donated a conservation restriction (CR) on the remaining land to the land trust, except for an area around the original homestead and two additional areas where the grandchildren could build houses in the future. Placing a CR on the property was also in their financial interest: the CR significantly reduced the value of the land and the taxes associated with the inheritance, and the donation of the CR was taken as a charitable gift and reduced the taxes even further. As a result, the three grandchildren and their families were able to afford to keep and to live on the land. Even though the land surrounding the houses is permanently conserved, the CR allows them to continue to use the land for recreation, gardening, and forestry.

Tools used:

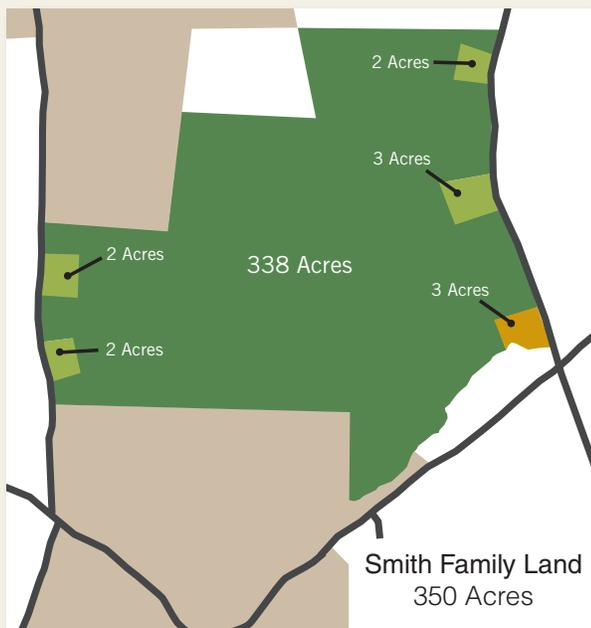
- Donation of a conservation restriction (CR)
- Reserving building lots

Finding out what your heirs need can be helpful in deciding what to do with your land. But being fair with your heirs does not always have to mean providing them with an inheritance that is financially equivalent, as demonstrated by Mrs. Smith's example.

Mrs. Smith inherited a 5-bedroom house, a barn, and 350 acres that had been in her family for over 200 years. Her two daughters had spent summers with their grandparents and loved the land. In her 70s, Mrs. Smith wanted to see that her daughters could continue to enjoy the property after her passing and liked the thought that it would remain much the way it had always been—fields and woods.



After open conversations with her daughters about the land, Mrs. Smith learned that her younger daughter Jane was interested in retiring, living at the homestead, and running a bed and breakfast business. The older daughter Sue lived in Vermont and wanted to stay there. To decide on a fair split of her assets for her daughters, Mrs. Smith first had the property appraised. The appraised value of her house and land was so high that federal estate tax would be due, and there wasn't enough cash in the family to pay for it, so some of the land would need to be developed to cover the estate taxes. Thankfully, after Mrs. Smith discussed the situation with a tax attorney and her accountant, another option emerged to keep most of the land in its natural state, while also providing a fair inheritance for her two daughters.



- Original Family Homestead
- Unrestricted Building Lots
- Donated Conservation Restriction
- Other Nearby Conservation Land
- Roads

Mrs. Smith donated a conservation restriction (CR) on 338 acres to the local land trust, reserving 3 acres around the house as well as four additional house lots. The original homestead and 3 acres will pass to Jane so that she can pursue her business plans. Sue will inherit the remainder of the family land and receive money from the sale of the house lots. Sue and Jane will not be burdened with an excessive estate tax when their mother passes away because the CR reduced the value of the land. And Mrs. Smith received an immediate income tax deduction from the donation of the CR and the peace of mind that the land will largely remain as fields and woods.

can ease some tension and create the right tone for these conversations. Of course, this may not be possible if holidays are the only time that family members get together. If this is the case, try to separate the family meeting from the events of the celebration.

Who?

It is best to err on the side of inclusiveness, especially in the beginning of the process. Extending invitations to all family members, including spouses, ensures that everyone hears the same information firsthand.

Many families have one or two members who do not want to be involved in the meeting. In this case, it is important to at least try to include them in the meeting by letting them know that you value their opinion and would like to hear their thoughts. It can also be helpful to include reluctant family members in a way that will make them feel comfortable and welcomed. For example, if they like to cook, ask them to help with the food, or if they know the land really well, ask them to lead a walk on the land.

Where?

Have your initial family meeting in person. There is no substitute for having everyone in the same room and hearing the same information at the same time. Though it is common for family members to live far apart, a face-to-face meeting is best, especially for the first meeting, which sets the tone for how the family will move forward and communicate in the future.

The meeting should be held in a place where everyone feels comfortable. Sometimes familiar places reinforce old habits and perpetuate unhealthy dynamics. If your home is not a neutral location, for whatever reason, then the meeting can be held in a restaurant, conference room, or other location where everyone is equally comfortable.

If the meeting will be held near the land, visiting or walking it together before the meeting helps everyone prepare for the meeting; it is a good opportunity for each family member to see the land and to reflect on what the land means to each of them.

How to prepare?

Collecting information about your land before the meeting can help inform the conversations by answering questions that people may have. This information will also be very helpful in future meetings involving the professionals listed in **Section Two**. A list of suggested information to collect can be found in the Deciding the Future of Your Land Checklist on page 38.

Communicating with Your Family

It is helpful to keep in mind that every family has its own unique dynamics, based on things such as birth order and past events, which can affect family members' ability to communicate openly and honestly with one another. Your goal is to create an atmosphere in which family members can put "old family baggage" aside and contribute their voice to a vision for the future of the land.

Asking everyone to avoid making assumptions of any kind, especially early in the process, and to stay open to new ideas starts the meeting off in a positive way. You should



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Grief and stress can derail and complicate the decision-making process. The time to start is now!



Does your family need help having a conversation about the land?

Sometimes a family's history and dynamics prevent the family from having a healthy conversation about what to do with the land. However, avoiding these important conversations about the future of your land and letting your family "figure it out" after you are gone will likely lead to even more tension in the family. Sometimes a neutral person can help your family with these difficult conversations. A **mediator** is a certified professional who is trained to assist families in conducting these conversations and can help your family reach consensus. A mediator can organize meetings, make sure each family member is being heard, and move the process forward by setting deadlines and following up with family members. To find a mediator, visit the "Find A Local Professional" page on www.masswoods.net.

Photo top: © iStockphoto/Trista Weibell

encourage family members to be respectful of one another by giving everyone an equal opportunity to share their thoughts. This may mean encouraging quiet family members to talk and asking more vocal ones to listen. **Most important, ask family members to commit to helping you find a solution that works for everyone.**

Starting the Conversation

The goal of the first family meeting is to give each family member the opportunity to express what the land means to him/her and what his/her financial or practical needs are. This can be accomplished by simply asking each person to talk about how he/she feels about the land. Is it a priceless family legacy to be protected at all costs? Is it a financial asset and nothing more? Or is it something in between? By listening to these comments, family members may learn that they share common feelings and needs. The differences are also important to know. Together, this is information that can guide your next steps and inform your work with estate planning professionals.

This exercise is also an excellent opportunity for you to share with your family your feelings about the land. **Communicating with your children about what the land means to you may help them make decisions about the land in the future by using your feelings as a guide.**

Getting a clear sense of the feelings and needs of family members can help define personal and financial goals for the land (e.g., keep the land undeveloped or keep most of the land undeveloped for one family member while providing income or a place to live for another).

An estate planning professional can help match your goals with the tools necessary to achieve them. See *the Smith family story on page 8* for an example of how one landowner was able to provide for the different needs of her children.

As you discuss your family's goals, you may develop a list of questions and information needed to take the next step in deciding the future of your land. These questions will be very helpful in determining what type of professional to contact. For example, if one of your family's goals is to maintain all or some of the property as undeveloped, contacting a land protection specialist (see page 16) to find out your land conservation options is an excellent next step after the family meeting.

- None

Sometimes the difficult decisions involved in creating a plan for your land can make it easy to delay the process. Unfortunately for Alma, she waited too long and her land and heirs suffered the consequences.

Alma stayed on her family's farm after her siblings moved away to raise families. She shared with her friends and relatives her desire for her farm to remain the way it was. She talked to a land trust and to her lawyer about how to accomplish that goal, but she never reached a decision about just exactly what to do with the land, and as a result, she never did a will at all.

After Alma died, the land passed to her three nieces. One niece knew perfectly well what her aunt had wanted and also felt the same way herself. She got in touch with a land trust and tried to convince her cousins that they should give or sell the land for conservation. But the other two either didn't know what Alma had wanted or didn't care. They wanted



money, and as much as possible. They contacted a local developer who offered them cash, even for just their two-thirds interest. The conservation-minded niece eventually gave her one-third interest to a land trust, along with some money that she hoped the land trust would be able to use to buy out the cousins. But they sold their two-thirds share to the developer instead. So the land trust owned a one-third interest, and the developer owned a two-thirds interest, and that's how it has remained for a number of years. Either the developer or the land trust could bring a partition action to get a court to divide or sell the land, but so far neither one has done that.

So the land has not been developed—yet. But neither has it been protected as Alma wished. And the house, which was built in the 1700s and which the local historical society had hoped to turn into a museum, was recently torn down: the land trust and developer could not agree on what to do with it, so it slowly rotted into the ground until it became a danger to the neighborhood.



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You need to be prepared to take the input you have received, work with the necessary estate planning professionals, and do what you believe is right for yourself, your family, and the land.

Defining the Next Steps

Maintaining momentum is very important. Take the list of questions and information needs developed at the meeting and assign people and timelines to specific next steps to help ensure that the effort is moving forward. If possible, to keep people engaged and included, everyone at the meeting should be responsible for at least one action item.

Convening Future Meetings

How long the estate planning process takes is really up to you and your family. If your goal is to have your family reach consensus about the future of your land, this may require more than one family meeting.

While everyone is together, the family should agree on how family members should meet and communicate in the future. Having the meeting in person with everyone included is the best option, though this is not always possible. The important thing is to keep everyone communicating and to keep the process moving forward, one step at a time. *See the Brown family story on page 15* to see how a large family reached consensus on the future of their family land.

As the meetings move forward and the family works to figure out a particular aspect of the estate plan (e.g., land conservation, tax implications), it may be helpful to have an estate planning professional present who can provide technical information and suggestions as well as answer questions. To find an estate planning professional, visit www.masswoods.net.

Moving Forward Despite Family Disagreement

Your goal may be to keep your family in agreement about the future of the land throughout the entire estate planning process. However, despite your best intentions and efforts, there may be situations where families are not able to work together or agree on a plan. In these cases, you need to be prepared to take the input you have received, work with the necessary estate planning professionals, and do what you believe is right for yourself, your family, and the land. Do not be paralyzed by family disagreements. If you do not make decisions about your land's future, it is likely that the disagreements will only get worse when you are gone and the decisions are left to your family.

SECTION TWO

Estate Planning Professionals *and* Tools



Achieving your goals will likely mean working with one or more estate planning professionals. Below are the descriptions of professionals who can assist you, some important estate planning considerations and tools, and information on how to find a professional who can meet your needs.

When considering which professional to contact first, it is important to remember that there isn't a single "right" path to take. Every family's situation is different. Instead, let the questions, generated from your family meetings or developed by yourself, drive the next step that makes sense for you. As you move down your estate planning path, it will likely become clear which professionals you will need to contact next to meet your needs. In some cases, you may be able to find an individual who can serve multiple roles, for example an estate planning attorney who is also knowledgeable about estate and income taxes. The Deciding the Future of Your Land Checklist on page 38 provides a list of helpful information to gather and possible first steps you can refer to when deciding how to move forward.

It is important to recognize that land is a unique type of asset that often requires specific knowledge on the part of estate planning professionals.

It is important to recognize that land is a unique type of asset that often requires specific knowledge on the part of estate planning professionals. For example, there are many estate attorneys, but many of those have not had experience dealing with land conservation. When selecting an estate planning professional, be sure to work with someone who has experience suited to your goals for your land. If you do not work with someone with the right know-how and experience, you may not be presented with all of your options or you may be paying a professional to learn on the job. For a good example of the positive role an experienced estate planning professional with conservation expertise can have, *see the Gordon family story on page 22*.

Work with someone you feel comfortable with personally and professionally. It is likely that you will be sharing a lot of personal and confidential information about you and your family. Your local land trust (see definition on page 16) can be a helpful source of information about estate planning professionals who specialize in land conservation. You can also talk to family and friends about their experience with estate planning professionals with whom they have worked.

When speaking with professionals, it is helpful to ask how they charge for their services and get an estimate of the total cost. The cost depends on many individual factors, including the complexity of documentation and planning required to achieve your goals, the number of people involved, and how well everyone involved works together. Therefore, it may not be possible to get an exact estimate, but the professionals should be able to provide you with a reasonable range. The costs also vary within and between professionals—some professionals charge a flat fee while others use an hourly rate or use a combination of both types of fees.

Tools used:

- Professional facilitator
- Family trust

As is the case with many family summer homes and properties, ownership of the Browns' 500-acre farmstead in a small town in the Berkshires was very complicated and only getting more so as the family grew.

The farm's ownership was divided between three generations of family members and 29 individuals who all loved the rolling meadows, deep woodlands, and vacations in the historic farmhouse. Recognizing that their complicated fractional ownership structure was too cumbersome for the family to effectively manage into the future, one of the second generation family members initiated a series of family meetings at the farm to assess their options and find a more straightforward ownership solution.

Since so many people were coming to the meeting from all over the country, this family member recognized the need to have a professional present to make the best use of their limited time together. With the assistance of a professional family therapist and facilitator, the family participated in a day-long



Photo courtesy of Bill Warren

family meeting once each summer over a three-year period. The facilitator kept the meeting on task, helped maintain civil communication and dialogue, and made sure each participant was able to speak his or her mind. With the assistance of one family member who is a lawyer, they created a trust open to all the descendants of the original family members, which kept their administration costs down since they did not need to update their documents every time a family member died or was born. A small family subcommittee oversaw the transition and drafted a mission statement for the trust that highlighted the property's role as a place to "renew family ties and peacefully appreciate the beauty and quiet of the land." Bylaws were written that guide members' use of the house and land, levy dues to pay taxes and upkeep, and establish procedures for nonpayment and election of officers.

Though the family members continue to be concerned about managing the farm's rising costs in the future, they have a solid ownership structure in place and a history of effective, healthy communication to build on.



Photo courtesy of Mari Hall

Definition of a Land Trust

A land trust is a nonprofit organization that actively works to conserve land for the public benefit (e.g., conserving wildlife habitat, protecting water quality).

This is typically done through the purchase or acceptance of donations of land or conservation restrictions.

Land trusts are usually organized as private charitable corporations or trusts. To find a land trust working in your town, visit www.masswoods.net.



© Stockphoto/Aida Murillo

Donating land or a conservation restriction can reduce your income tax and other tax burdens.

Land Protection Specialist

For many landowners and families, the natural beauty and legacy values of their land are at least equally important as its financial value. Their land may be where they raised a family, explored nature, worked in the woods, and took walks. To meet their family's personal needs or out of a desire to preserve nature, some landowners limit the types of activities that happen on the land in the future so that all or some of it will stay in its natural or undeveloped state through the use of land conservation tools. In addition, these land conservation tools often provide some positive financial values through income or tax savings. Understanding these options is an important step in deciding the future of your land.

Land protection specialists (sometimes called conservation specialists or land agents) work for land trusts and government conservation agencies and assist landowners who want to achieve personal and financial goals for the land through land conservation. For an example of how their expertise can help, see *the Sterling family story on page 17*. To find a land protection specialist, contact a land trust or state conservation agency working in your town by visiting www.masswoods.net.

Finding a Conservation Organization to Work With

Many land conservation organizations seem exactly alike at first glance, but their missions and land management philosophies can vary greatly. State conservation agencies (i.e., MA Division of Fish and Wildlife, MA Department of Conservation and Recreation, MA Department of Agricultural Resources) and private land conservation organizations or land trusts (see definition this page) achieve their mission, in part, through land conservation. Your property's location, size, and natural resources all help determine which conservation organizations may be interested in working with you to conserve your land. If you do indeed decide to move forward with land conservation, it is important that the organization you work with shares your goals and personal philosophy about land and land management.

Land Conservation Tools

Below is a brief description of commonly used land conservation tools and options. A land protection specialist can answer your questions and help you determine which option is best for your family. Unlike the other professionals listed in this section, land protection specialists typically do not charge for their time to talk about your land conservation options.

Donating or Selling Conservation Restrictions

Your land includes several different types of rights, including the right to develop your land, farm, hunt, and manage your woods. A conservation

Tools used:

- Chapter 61B
- Bargain sale of a conservation restriction (CR)
- Reserving future building lots

When Mrs. Sterling and her three cousins inherited 64 acres of mostly wooded land in Western Massachusetts, she knew she wanted to see the land preserved in its natural state rather than sold for house lots.

To make that wish a reality, she worked with her cousins to buy them out via a family mortgage, but with that added monthly cost, she was having trouble making ends meet. Her attorney recommended that she contact her local land trust, the Minnechaug Land Trust, which was very interested in seeing her land conserved.

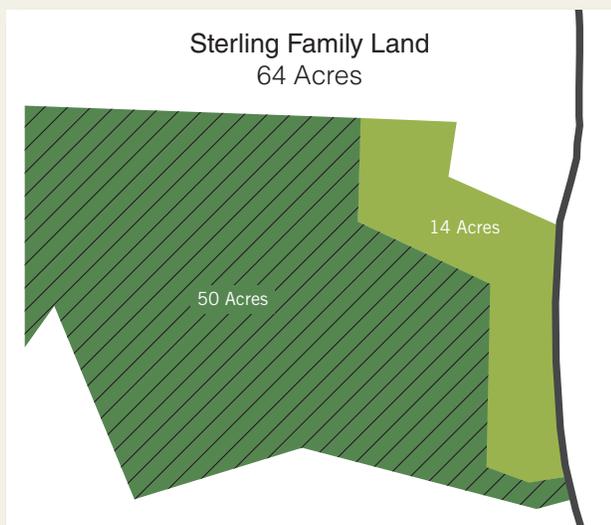
First, the land trust advised her to enroll her land in Chapter 61B to reduce her property tax burden. Second, the land trust inventoried the land and determined that 50 acres were valuable for habitat conservation. The land trust proposed purchasing a conservation restriction (CR) on the 50 acres, which would keep the land in Mrs. Sterling's ownership



Photo courtesy of Naomi Eggert

but eliminate the development potential of the land. The remaining 14 acres, containing most of the road frontage, remained untouched and available for future building lots. Mrs. Sterling hired an appraiser to conduct a conservation appraisal to document the market value of the land both for development and conservation purposes. The difference in the values, and thus the CR price, was appraised at \$165,000.

The land trust applied to a state grant program for land conservation to help the trust pay the cost of the purchase of a CR. The land trust managed to raise \$120,000 to purchase the CR. Mrs. Sterling agreed to sell the CR through a bargain sale at the \$120,000 price. The difference—\$45,000—was a charitable donation to the land trust, which helped offset Mrs. Sterling's capital gains tax from the sale of the CR. Mrs. Sterling will continue to own all the land and manage it as she sees fit, knowing that the majority of the land will remain in its natural condition forever.



- Unrestricted Land
- "Bargain Sale" Conservation Restriction
- Chapter 61B
- Roads



Spending Money to Save Money and Protect Your Family

Why use professional services? Experienced professionals provide you and your family with options you may not have known about and sound advice to help you reach your goals. Investing in professional advice can also mean passing on more of the value of your assets to your family, by paying less in taxes for example. Remember that if you do not hire a professional to help you plan now, your estate or your family may have to hire one when you are gone. More importantly, successful estate planning can also help ensure that disagreements over your land are not the reason for family tensions or splits that may last a lifetime. Professionals are an investment in your family and your land.

Photo top: © iStockphoto/Edward Bock

restriction (known as a conservation easement in states other than Massachusetts) is a legal agreement that extinguishes some or all of the development rights of the land forever, but allows your other rights such as farming, forestry, and recreation to continue, all while maintaining your ownership of the land. A conservation restriction (CR) is a flexible tool that can be placed on all or only designated parts of your land, allowing you to reserve house lots to provide financial value or housing options for your family. Some CRs allow public access, others do not—it usually depends on which organization you work with and whether you are receiving funds for your CR.

A CR can be donated which can provide the landowner with a tax deduction or credit for a charitable gift. A CR can be sold for income if the land has exceptional natural resources. A CR can also be sold below market value for both income and tax benefits (see “Bargain Sale” below). *See the Bill Rose story on page 27* for an example of how to use a combination of a CR donation and sale to achieve a family’s goals while maximizing tax advantages. In addition, a CR can be donated by your family within nine months of your death for the potential tax benefits, *as illustrated by the Sylvia Kelly story on page 24*.

Donating or Selling Land

Land can be permanently protected by donating it or selling it to a qualified conservation organization, such as a land trust or state conservation organization. Donations of land may provide significant tax advantages as a charitable gift. To find a land trust or state conservation organization working in your town, visit www.masswoods.net.

Bargain Sale

Landowners can sell their land or conservation restrictions at a price below its fair market value. The difference between the appraised market value and the sale price to a qualified conservation organization, such as a land trust or a state conservation organization, is considered a tax-deductible charitable contribution, providing some income and potentially some tax benefits, *as demonstrated by the Sterling family story on page 17*.

Bequest

A donation of land or a conservation restriction through your will is another way to ensure your land’s permanent protection and potentially to reduce your estate tax burden. You can change your will at any time, and a bequest does not become effective until your death. This is a good approach if you need to keep the financial value of your property in reserve in case of unexpected medical bills or other needs, but want to be sure the land will be conserved if you do not need to sell it during your lifetime.

Reserved Life Estate

Landowners sometimes negotiate a gift or sale of the property while reserving the right to occupy and use the property for life. Upon the death of the landowner, control of the property automatically transfers to a conservation organization. The gift of a property with a reserved life estate can qualify the donor for a charitable deduction based on the value of the property donated and the value of the reserved life estate, which is all based on the donor’s age. *See the Hoag family story on page 31* to learn more about how they used this tool.

Sisters Grace Kingsbury and Alice Williams • Chesterfield, Massachusetts

Tools used:

- Massachusetts income tax credit for land conservation program
- Donation of a conservation restriction
- Federal income tax deduction
- Reserving a future building lot

Conserving your land often requires spending a few thousand dollars in real estate transaction costs and other fees. But for many landowners who donate all or part of the value of their land or conservation restriction, an innovative tax credit program can help cover these costs and still leave some money in your pocket.

Sisters Grace Kingsbury and Alice Williams inherited 45 acres of land in rural Chesterfield, Massachusetts, from their parents. The sisters share a strong attachment to the land that had been in the family for nearly 150 years. While growing up, they spent a lot of time at the farm with their grandparents, picking berries and vegetables, collecting eggs, helping in the garden, and playing in the brook. Later, their children enjoyed spending time at the farm with their grandparents. In the past several years, the sisters' families would vacation at the old farmhouse on the property, overlooking 10 acres of hay fields and offering a spectacular view of the hills surrounding the Westfield River.

Grace and Alice hoped their land would remain in its natural state forever, but they weren't sure what they needed to do to ensure this. Then they learned about the Hilltown Land Trust, a local, nonprofit conservation organization. The land trust helped them choose a path forward.

The sisters wished to place a conservation restriction (CR) on the land, which enabled them to own the property while preventing future development on the fields and woodlands. They were open to donating the CR to the Hilltown Land Trust, but struggled to pay the several thousands of dollars in transaction costs associated with the project—costs associated with surveys, an appraisal, legal fees, and recording fees. The Hilltown Land Trust also requested a small endowment from the landowners so that the organization would have the resources to steward and monitor the conservation restriction in perpetuity.

As a way of covering these expenses, the Hilltown Land Trust worked with Grace and Alice to apply for a Massachusetts income tax credit for land conservation, which can provide landowners up to \$50,000 for donating the value of land or conservation restriction. Because their land was identified as having important wildlife habitat and exceptional water resources by the Massachusetts Natural Heritage and Endangered Species Program, they qualified for the tax credit. They also qualified for a federal income tax deduction for their conservation donation. The tax credit covered many of the transaction and endowment costs associated with the project and left some funds for the families as well.

Named the Damon-Hunter Conservation Area to honor their parents, grandparents, and great grandparents, the conservation restriction covers 38 acres of their family homestead, leaving the area around the summer home free of the CR, as well as an additional 7 acres to allow for a future building lot. "This property has been in our mother's family since 1864 and is very special to our family. We wish to preserve it in a natural state, in order to maintain its natural and scenic values and to benefit the wildlife habitat that it supports. This is exactly what Mother would have wanted, and it is what her family before her would have wanted," said Alice, who now lives in Connecticut. Now that the land's future is secure, Grace has transferred her portion of the property to her sister Alice, whose son Audley and his wife Angel plan to move to the property to start a new farming enterprise.



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Massachusetts State Income Tax Credit for Land Conservation

If you donate a conservation restriction (CR) or land with certain natural resource values, or if you sell a CR or land that has those same natural resource values at below fair market value (bargain sale), you can apply for a Massachusetts income tax credit for land conservation. This income tax credit

- provides tax credits for the value of the donation, limited to 50% of the donated value, capped at \$50,000;
- applies to your state tax liability during the year of the donation. If your tax credit is larger than your tax liability, the state will issue a check for the remainder of the approved credit;
- can be utilized in addition to claiming the federal income tax deduction.

Example: A landowner donates a CR worth \$90,000 and owes \$5,000 in state taxes that year. The landowner is approved for a \$45,000 credit (i.e., 50% of the donation capped at \$50,000). The landowner would be responsible for paying \$0 in state taxes that year, would be issued a check for the remaining \$40,000, and could also claim federal income tax deductions for the donation.

See the *Kingsbury and Williams case study on page 19* for a real-life example of landowners who used Massachusetts income tax credit. To learn more about the Massachusetts income tax credit, contact your local land trust, which you can find at www.masswoods.net.

Limited Development

Limited development is an option that protects the majority of the land while a small portion is sold or maintained by the landowner for future development. In a limited development scenario, the areas with the greatest conservation value are protected through one of the tools described above, while other less sensitive areas of the land are set aside for future development. See the *Smith family story on page 8* to learn more about how this tool works.

Estate Planning Attorney

The involvement of an estate planning attorney is critical to an effective estate plan. An estate planning attorney specializes in the legal strategies and tools used to help you, the landowner, reach your personal and financial goals. In addition, an estate planning attorney can help you better understand your options and the implications of those choices, enabling you to make an informed decision about the future of your land.

Keep in mind that not all estate planning attorneys have specialized knowledge of land and the tools that can be used to help you maintain some or all of the land in its natural state. If an estate planning attorney does not have experience with land, he or she may not be able to provide you with all your options or may have to learn about these tools and how they are applied to your land. An estate planning attorney with experience in land conservation can offer strategies to help you meet your financial needs and maintain your land as a legacy. A good example of the role of an estate planning attorney can be found in the *Gordon family story on page 22*.

To find out if an estate planning attorney has experience working with landowners and land assets, you can ask him or her to describe a typical client, how often he or she works with families and land assets, and the kinds of solutions he or she has developed for other clients. It may also be very helpful to talk to your friends, family, or local land trust about estate planning attorneys they have used and who understand family land issues. To find an estate planning attorney with land conservation experience, visit www.masswoods.net.

Depending on your goals, you will need an estate planning attorney for one or more legal aspects of your estate plan. Estate planning attorneys recommend that all estate plans, regardless of land ownership, should include the following elements: a will, beneficiary designations for retirement plans and life insurance, a homestead declaration, durable power of attorney, and a health care proxy. In addition to these important core elements, below are descriptions of common components of an estate plan that have important relevance for landowners. An estate planning attorney with experience with land can help you determine which combinations of tools will best meet your needs.

1. Passing on Your Assets

Critical to any estate plan is documenting how you want your assets handled when you are gone. If you fail to do anything, state law or default beneficiary designations will take over, which may not reflect what you want. While life insurance and retirement assets are most commonly passed on by way of beneficiary designations, other assets, including land, are probably most commonly passed through a will or a trust. These legal tools can ensure that your land will be handled in a way that meets your goals and those of your family.

Wills

A will is a legal document that communicates how your assets are to be distributed upon your death and who will be your personal representative (formerly referred to as an executor)—the person you name to be in charge of carrying out your wishes. Your will offers a last chance to state how you would like your land treated when you are gone. If you do no other estate planning, consider incorporating your wishes for the land into your will.

It is very important that you review your deed before making your will. If your will is in conflict with your deed, the ownership succession stated in your deed supersedes your instructions in your will. For example, if you put in your will that your land should go to your child, but the type of ownership on the deed automatically passes on the land to your spouse, the land will be passed on to your spouse. *See the section on page 23 on “Forms of Land Ownership”* for more information.

If you are not clear about your intentions for the future of your land, your personal representative may be required to divide and then sell or develop your land to maximize the value of your estate at your death for the financial benefit of your beneficiaries. If you do not want your land handled in this way, it is critical that you state your wishes explicitly. *See the Sylvia Kelly story on page 24* to learn about a landowner who specified in her will that a conservation restriction (CR) be placed on her land.



Photo courtesy of Sean Pallock

An estate planning attorney with experience in land conservation can offer strategies to help you meet your financial needs and maintain your land as a legacy.

Tools used:

- Family trust for intergenerational transfer
- Sale of land to a state conservation agency

A good estate planning attorney can be worth his or her weight in gold, a lesson a family in Central Massachusetts learned well.

As they approached their late 70s, Mr. and Mrs. Gordon were toying with the idea of downsizing from their 45-acre farm. Though they did not have a lot of savings, they and their three grown children did not want to sell the farm and see the land developed. A neighbor had recently sold some land to the MA Department of Conservation and Recreation (DCR) for watershed protection, and they wondered if that was an option for them as well.

They began discussions with DCR, which had an appraisal done on about 40 acres that came in at \$300,000. The Gordons then had the house and barn and their remaining 5 acres appraised separately, which came in at \$150,000. The opportunity to receive money out of the land, while seeing that it remain forever in its present wooded condition, was very attractive, but they also wanted to pass the house and land on to their children without major tax implications.

With the help of an attorney with experience in estate planning, the Gordons' three children established a trust, with one child as trustee. The Gordons entered into a contract with the trustee under which (1) they agreed to sell their entire property to the trust for \$450,000; (2) they also agreed to lend the trust the entire purchase price, with the loan secured by a mortgage on the house and land; and (3) the trustee agreed that the Gordons could continue to live in the house rent-free for one year. Since no money changed hands and the Gordons did not have to move out, this transaction was completed quickly and easily. Although the Gordons had purchased the property 50 years prior for \$5,000, there was no capital gains tax on this sale because of the exemption for the sale of their principal residence.



Photo courtesy of Jackie Cooper

A couple of weeks later, the trust sold the 40 acres to DCR for \$300,000. Again, there was no capital gains tax on this sale, because the trust sold the land for the same price it had purchased it at. The trustee then paid the \$300,000 to the Gordons, reducing the amount of the loan from \$450,000 to \$150,000.

During the next year, the Gordons forgave the \$150,000 loan to their children's trust (which required filing a gift tax return, but no tax was due) and entered into a lease with the trust at a low but reasonable rent, enough to cover the trust's expenses while keeping down its income tax liability. Not too long afterward, Mr. Gordon passed away and Mrs. Gordon moved to an assisted living facility. Through their trust, the children own the house, and one child is likely buying out the others and moving in. Though these transactions were complicated and did require a great deal of professional assistance, the Gordons were able to pass on their land to their children equitably, conserve the land they loved, and avoid a potentially significant tax burden.

If you want a CR placed on your land after you pass away, instruct your personal representative accordingly in the will and be as clear as possible about the terms of the CR, including where on the land it should be placed and the number of house lots allowed on the land, if any. Articulate what kinds of activities you would like to allow on the land, for example agriculture, forestry, or public access. Consider attaching a draft CR as an exhibit to the will so that there is no question about your intentions. As described in the will example *in the Sylvia Kelly story on page 24*, be as specific as possible so that your family cannot misinterpret or ignore your wishes. Estate planning attorneys who specialize in land conservation can help you develop a will that includes wording about the future of your land.

It is advisable to contact a land trust or state conservation agency to make sure that they are willing to accept your land or CR before naming them in your will. Learn more about choosing a conservation organization on page 16.

Trusts

A trust is another vehicle that you can use to direct the future of your land at your death. A trust creates a legal entity that can have legal ownership to property, including land. A trust separates your assets from outright ownership by you. There are many forms of trusts and many uses for trusts, but like a will, a trust can be used to specify what must be done with your land when you are gone. If your land is owned by a trust, the trust instrument directs how the land is used and distributed, even in the absence of a will. The trustee of the trust manages the land for the benefit of the beneficiaries and can last for a short period or for many years as you direct. If your land is owned by a trust before your death, it is removed from your probate estate. In addition to specifying the distribution of your assets, a trust is also a form of indirect ownership as described below.

2. Forms of Land Ownership

Another important legal consideration in deciding the future of your land is determining the type of legal ownership of your land. This determines who controls the land, how it is transferred, how it is taxed, and how liability will be shared, among other things. Determining which form of ownership is best for you depends on several factors, including the number of people who will be sharing ownership, liability concerns, how income from the land is taxed while you are alive, and how the land is taxed when it is transferred. There is a range of land ownership options. Bringing your goals, or those of your family, to an estate planning attorney with land conservation experience is a great way to sort out which type of direct or indirect ownership is the best fit.

A great place to start your conservation-based estate planning is by reading your deed, which lists your current ownership, and understanding the implications of this form of ownership. The deed to your land can be found at the Massachusetts Land Records website: www.masslandrecords.com. An estate planning attorney, land trust, or forester can help you find your deed. The form of ownership listed on your deed will determine who will get your land if you pass away without doing any estate planning. If your current form of ownership

The Difference between Trusts and Land Trusts

It is common for people to confuse a trust and a land trust. A trust is a legal entity you create to achieve your estate planning goals while a land trust is a nonprofit organization that helps landowners reach their conservation goals (see page 16 for more information on land trusts).

A great place to start your conservation-based estate planning is by reading your deed, which lists your current ownership, and understanding the implications of this form of ownership.

Tool used:

- Post mortem conservation restriction (CR)

One simple estate planning step you can take right away is to be clear in your will about your wishes for your land.

Sylvia lived on the family farm her whole life. She never married and had no children. When she was in her 80s, everyone in her immediate family—her nieces and nephews, her sisters and their husbands, and Sylvia herself—agreed that the farm should always remain a farm and never be sold for development. But no one quite knew how to do it. One niece had heard of conservation restrictions (CRs), and she convinced Sylvia to talk with land trusts and conservation agencies. Sylvia was far from wealthy, and she was hoping that a conservation agency would buy the CR from her, but her land was not on anyone's priority list. As the conversations continued without any positive result, Sylvia knew she had to make a will. She signed a will that instructed the executor of her will to put a CR on the farm if she didn't get it done herself, and then the farm with the CR was to be turned over to her nieces and nephews. She was unable to complete the restriction herself before her death.

In hindsight, the will could have been more specific about the terms of the CR, as it gave the executor (one of Sylvia's sisters) very broad discretion to determine such things as whether the CR should allow for multiple house lots in addition to the existing farmhouse. Had some of the nieces and nephews been more interested in selling house lots for cash and less interested in protecting the farm, the result could have been a big dispute about this issue and, in all likelihood, a lot less of the farm would have been protected. As it turned out, the family agreed that the CR could allow for one more house to be built and the farmhouse to be sold separately from the land, since it was of historical significance and really required an owner appreciative of historical buildings.

As a general rule, estate assets are valued as of the date of death for estate tax purposes. Fortunately, as neither Sylvia nor the lawyer who drafted her will knew this initially, the estate tax law allows for a **post mortem conservation restriction**. This allowed the family to place a CR on the land up to nine months after her death to significantly reduce its taxable value. Since the farm had substantial development potential, this made a big difference in the amount of estate taxes due from Sylvia's estate. Were it not for this provision, the farm would have had to be sold in order to raise the cash to pay the estate taxes.



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does not meet your personal and financial goals, you can work with an estate planning attorney to change your ownership to one that will.

The various types of land ownership can be divided into two types: direct and indirect.

Direct Ownership

Direct ownerships are those in which a person or people own the land directly. The names of the people who own the land are on the deed, which can be found at the registry of deeds (www.masslandrecords.com). If you have inherited your land in Massachusetts, you may not have a deed with your name on it; instead, your ownership may be reflected in the registry of probate. In this case, it is still likely that you have a form of direct ownership in this event.

Direct ownerships are the most common form of land ownership. They are easy to set up and maintain, and all forms of direct ownership can be combined with land conservation tools. However, they do not provide protection for liability or a mechanism for the gradual transfer of land. Below are some examples of direct ownership and a short description of how land in these forms of ownership is passed on:

- **Individual ownership.** The ownership of the land is by a single person, whose name is listed in the deed. Upon the death of the owner, the land is transferred according to the terms of his or her will.
- **Joint tenants.** The ownership of land is by two or more people, and the deed states that they own jointly or jointly with right of survivorship. Upon the death of an owner, the property automatically passes to the surviving owner or owners. The will does not override this automatic transfer.
- **Tenants by the entirety.** Ownership is held by spouses (and spouses only), and the deed states that they own as tenants by the entirety. Upon death of a spouse, the property automatically passes to the surviving spouse. The will does not override this automatic transfer.
- **Tenants in common.** The ownership of property is by two or more persons, which may be in specific shares. If a deed does not state that the persons listed on the deed own jointly or as tenants by the entirety, then they own as tenants in common. If one person dies, his or her share passes according to the terms of his or her will. Note, ownership by tenants in common may create complicated ownerships by increasing the number of owners as it is passed on, which can result in difficult decision making among the owners.
- **Life estate/remainder interest.** The ownership of property is by two or more persons, at least one of whom owns a life interest and has rights to live in and use the property while alive. When the owner holding the life interest dies, full property ownership transfers automatically to the person or persons holding the remainder interest, who had only limited rights during the life of the person holding the life interest. The will does not override this automatic transfer.

The various types of land ownership can be divided into two types: direct and indirect.

Land Ownership Agreements

Land ownership brings with it many benefits (e.g., recreational use, income from forest management) and responsibilities (e.g., taxes, maintenance). These benefits and responsibilities can be complicated when there are multiple owners of land. To reduce the likelihood of disputes, landowners who co-own land may want to consider a land ownership agreement. A land ownership agreement is a contract between two or more people who own a piece of property together that typically describes each party's (1) right to use the land, (2) obligation to pay taxes, (3) responsibilities for maintenance of the property, (4) entitlement to profits, and (5) transfer rights in the property. Though it is not a form of ownership, an ownership agreement can outline the rights and responsibilities of the owners in an effort to avoid conflict and increase the enjoyment of ownership. An ownership agreement can be a very good way for landowners to establish a workable solution for owning the land together and can be used in combination with the forms of direct ownership that result in multiple owners.

Indirect Ownership

The second type of ownership is indirect ownership in which land is owned by a legal entity instead of a person. Indirect ownership can be more complex to set up than direct ownerships, but does bring with it opportunities to protect individuals from liability, as well as the ability to gradually change or transfer the ownership, which can offer important tax benefits. Below is a list of some of the most common indirect forms of land ownership that families can use to achieve their goals:

- **Trust.** There are many kinds of trusts and reasons for setting them up. In general, trusts operate in a top-down fashion where the creator, usually the landowner, names a trustee, who manages the assets and must act as directed in the trust and in the best interest of the trust's beneficiaries. The beneficiaries are those named in the trust who will be receiving assets from or otherwise benefit from the trust. The way in which the land will be transferred, the timing of the transfer, as well as how decisions will be made about the land can be written into the trust. Other common reasons for creating a trust include avoiding the cost and delays of probate (the winding-down of your affairs under the supervision of the court), assigning a trustee to run your affairs if you are unable to do so, reducing or eliminating estate taxes, and keeping your estate private.

Massachusetts state law limits the number of years that a trust can stay viable, so while trusts can offer a good option for families, they are not a permanent solution. The trustee of the trust has a responsibility to protect the financial value of the assets in the trust, which may make it difficult to permanently conserve land in a trust since it reduces the value of the land. If permanent land conservation is a goal now or in the future, landowners should include that goal as part of the organizing principle of the trust.

By working with an estate planning attorney with experience setting up trusts, you can determine if a trust is an appropriate tool to achieve your goals. *See the Thompson family story on page 28* to see how they used a trust to pass on land to the next generation of their family.



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Indirect ownerships can provide an effective mechanism for transferring ownership of your land from you to your family while reducing taxes and limiting liability.

Tools used:

- Sale of an agricultural preservation restriction (APR)
- Donation of a conservation restriction (CR)
- Maintaining a large unrestricted parcel

One of the principal goals of estate planning is to come up with a strategy to reduce taxes associated with conserving and transferring land.

When Bill and Sue Rose took over management of the Red Apple Farm in Phillipston, Bill was following in the footsteps of his father and grandfather, who had also raised apples on the land. While under Bill's management, the family business was converted from a wholesale operation to a direct marketing farm selling retail and pick-your-own apples, peaches, blueberries, and pumpkins.

Bill wanted to honor the hard work of his father and grandfather and decided to permanently conserve the farmland. He also wanted to make sure his son—who was interested in continuing the farm—could become the next owner of the land without a mortgage or a big tax burden. He contacted state conservation agencies and found that the MA Department of

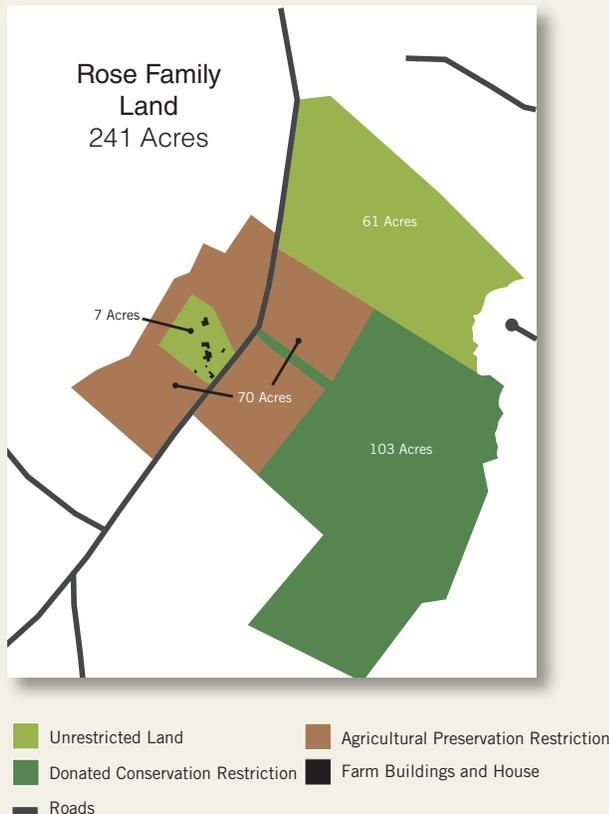


Photo courtesy of Norm Eggen

Agricultural Resources was interested in protecting the orchards and fields. The state agency bought the development rights from Bill and placed a permanent Agricultural Preservation Restriction (APR, a conservation restriction for farmland) on 70 acres of the orchard, excluding a 7-acre area around the house and barns. But the state was unwilling to protect a 103-acre woodland surrounding the orchard. The woodland parcel had an approved gravel permit, which increased its value.

It turned out that the funds Bill received from the APR resulted in a substantial capital gains tax. A tax attorney helped Bill find a solution for dealing with the taxes while protecting the remaining land. Bill made a donation of a conservation restriction to a local land trust on the 103-acre woodland. This donation was considered a “charitable gift” for tax purposes and allowed him to receive a substantial income tax deduction that offset the capital gains tax incurred by the APR. The land under the APR was transferred to Bill's son Al and daughter-in-law Nancy, who continue to run the farm, and the woodland is used by Bill for forestry as well as hiking and hunting.

Bill advises anyone who cares about the future of their land to consider a conservation restriction: “Putting a conservation restriction on your land will take longer than you think it will. But first you need to make sure a CR will fit into your family's financial situation. You'll need advice from qualified professionals to help you, but it is money well spent.”



Tools used:

- Timber harvests
- Family trust
- Chapter 61

Keeping land in the family is a common goal for many landowners, but how do you actually pay for the long-term ownership and maintenance costs associated with the land?



A bad storm a few years ago knocked down lots of trees on the property, which prompted the family to consider a more active approach to managing their woodlands. With the help of a consulting forester, they enrolled their land in Chapter 61, reducing their property tax burden, created a forest management plan, and began harvesting timber from the land. The income from the timber harvests went right back into maintaining and improving the property with projects such as a new porch. The harvests also cleared out some of the forest understory, making walking in the woods much easier and enjoyable, and created logging roads that the family now maintains for hiking trails. The family agrees that the timber harvests are a form of long-term land stewardship, which is providing income and helping them maintain this special place long into the future.

The Thompson family has found a solution that works for them and their family retreat on 45 acres of woodlands in Leverett. Now owned by the fourth generation, the property is the site of the family's 4th of July reunion, annual work parties, and lots of family vacations. As the property was about to be transferred from 3 members of one generation to the 12 members of the next, the family grappled with the challenge of keeping the property that they all loved affordable and accessible to future generations. As a solution, they set up a trust that owns the farmhouse and land. Each of the three branches of the family has a one-third interest in the trust and is represented by one trustee. Bills for taxes, insurance, and mowing are split in thirds. The trust was set up so that individual family members could opt out, but could never be bought out, in order to keep participation affordable for the remaining members.



Photos courtesy of Thompson Family

- **Nominee/realty trust.** Though the word *trust* is in the title of this form of indirect ownership, a nominee trust (also called a realty trust) is not a true trust; it is an agency relationship. Despite the name, a nominee trust actually operates differently from other trusts: instead of the top-down decision making by a trustee of a true trust, a nominee trust operates from the bottom up, in that the trustee may act only at the direction of the beneficiaries, those who hold the beneficial interests.

Transfers of the beneficial interests in the nominee trusts do not need to be recorded. This characteristic means that the owners of the beneficial interests are kept private. More importantly, however, landowners who have transferred ownership of their land to a nominee trust may easily transfer their interests gradually over time with multiple transfers, without the need for a new deed for each transfer. Gradual transfer of the beneficial interests can be efficient for gift tax purposes, and owners also save recording fees. The nominee trust provides an opportunity for landowners to transfer ownership as need and life circumstances change. Land owned as a nominee trust can be put into permanent conservation. A nominee trust does not protect the beneficiaries from liability.

By working with an estate planning attorney with experience in nominee trusts, you can determine if a nominee trust is an appropriate tool to achieve your goals. *See the Coolidge family case study on page 35* to see how they used a nominee trust to meet their goals.

- **Limited Liability Company (LLC).** When choosing to use an LLC, land ownership is transferred to the LLC, and the rules that run it are put into an operating agreement and agreed to by all the initial members. The LLC is managed by a manager for the benefit of the members. Shares of ownership can be transferred by members by gift or by sale, as determined in the operating agreement. The LLC can be used to gradually move ownership from one person to another or between generations. The gradual transfer of ownership can help minimize taxes and provides a mechanism for changing ownership as need and life circumstances of the members change. As the name suggests, Limited Liability Companies also protect all owners from liability. Unlike trusts, LLCs can be maintained in perpetuity and amended by the members over time, providing a long-term strategy for land ownership and decision making. In addition, land owned as an LLC can be put into permanent conservation. There is an annual cost for maintaining the LLC.

Should you choose to move forward with land conservation, it is strongly recommended that you work with an estate planning attorney who has knowledge and experience with land conservation.

3. Legal Review

Should you choose to move forward with land conservation, it is strongly recommended that you work with an estate planning attorney who has knowledge and experience with land conservation to review the conservation restriction or deed that you have developed in partnership with a land trust or conservation agency. Your attorney can ensure that these legal tools reflect your wishes and will meet your goals.



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Having a firm grasp of your current financial situation, as well as a sense of your future needs, is an excellent starting point.

Certified Financial Planner

A Certified Financial Planner (CFP®) is a professional who can help you set and achieve your long-term financial goals through investment, income, and retirement planning. Having a firm grasp of your current financial situation, as well as a sense of your future needs, is an excellent starting point to determining the appropriate estate planning tools necessary to reach your goals and minimize your taxes. To find a CFP, visit www.masswoods.net. Some tax attorneys and CPAs may also provide financial planning services. See below for more information on tax attorneys and CPAs.

Tax Attorney and Certified Public Accountant

It has been said that the only sure things in life are death and taxes: estate planning is about preparing for both. Land is likely one of the most valuable assets in your estate. The historic rise in real estate values may mean that your land's value may be greater than you think (see "Appraiser" on page 33). The amount and type of taxes your estate may face depend on the value of your land, the type of ownership your land is held in (see page 23), and how your assets, including your land, are transferred to your family. The goal of tax planning is to pass on your assets and land in a way that meets your family's goals while minimizing the amount of taxes for which your estate becomes responsible.

A tax attorney is a lawyer who specializes in tax issues (property tax, estate tax, capital gains tax, etc.). A Certified Public Accountant (CPA) is a licensed professional who understands tax codes and specializes in helping individuals prepare tax returns. Once these tax professionals have an understanding of your financial and family situation, they can develop and evaluate alternative strategies that are designed to fulfill your goals while minimizing taxes. To find a tax attorney, visit www.masswoods.net.

Not all tax attorneys and CPAs are knowledgeable about the land conservation provisions of the tax codes. Like with other professionals, it is important to work with a tax attorney or CPA who has an understanding of the tax law related to land conservation so that you can learn all your options, such as reducing the taxable amount of your estate by placing a conservation restriction on your land (see page 16).

Taxes Involved in Land Transfers

Below are taxes that may affect you as a landowner as you move forward with deciding the future of your land. **Remember that the laws that determine these taxes can change.** The descriptions below do not represent the law in any particular year, but instead are a simple explanation of the taxes that may be involved when land is transferred between people or generations of a family.

Federal and State Estate Taxes

This is a tax on your estate if its value exceeds a certain threshold. One opportunity to lower the value of your estate is through land conservation tools (see the "Land Conservation Tools" section on page 16). Federal and state tax thresholds often change from year to year.

Gift Taxes

These are federal taxes incurred on gifts given while you are living. You can give a certain amount per year without triggering this tax. Giving under the taxable limit can be a useful way of transferring ownership or interest in land slowly while avoiding taxes. If you give more than the limit annually, the excess is applied toward your lifetime gift-tax exclusion. If at any point the gifts you gave during your life, or left in your estate, exceed that exclusion, the donor generally pays gift tax on the excess amounts. Gifts of any amount transferred between spouses are allowed tax-free.

Capital Gains Taxes

These are taxes assessed on the sale of capital assets, including land. This tax is applied to the value that your land and other assets have appreciated over time. For example, if you

Hoag Family • Medway, Massachusetts

Tools used:

- Donation of a conservation restriction (CR)
- Reserved life estate
- Chapter 61

Sometimes you can get everything you want. A patch of woods in Medway has been a joy for Dave and Grace Hoag to own and walk on a regular basis, and they wanted to make sure it stayed undeveloped and available for quiet hikes in the future.



© iStockphoto/David Phillips

The Hoags utilized the Forest Stewardship Program to create a long-term management plan for the woods and enrolled in Chapter 61 to reduce their property tax burden. Dave decided to protect his land with the help of a local land trust.

The Hoags first subdivided their land to carve out their house and surrounding lot, leaving 15.5 acres of fields, woods, and meadows in the midst of the quickly suburbanizing town. They then placed a conservation restriction (CR) on the land, extinguishing their right to develop the property in the future. An appraisal documented the development value of the land and the reduced conservation value, which provided the Hoags with a significant income tax reduction. They also worked with the land trust to transfer the land to the organization outright upon their death. Called a reserved life estate, this arrangement will keep the land in their ownership until they pass away, after which time it will be owned by the land trust and opened to the public. The Hoags' children will inherit their house and were happy with their parents' choice to donate the land that they loved so much.

Tools used:

- Donation of a conservation restriction (CR)
- Reserving one building lot

Eleanor Rogers owned 10 acres on Little Pleasant Bay in the Cape Cod town of Orleans and planned to leave the property to her son, daughter, and four grandchildren.

The family loved walking the land as well as kayaking in the bay. Eleanor's daughter Ellie Johnson was interested in conserving the property and had some exposure to land conservation from her involvement with a campaign to prevent development on Mount Holyoke in Western Massachusetts, so she knew to get in touch with a local land trust. On the land trust's recommendation, the family had the land appraised by a qualified independent appraiser to find out the value of the land. Although the family knew that waterfront land on the Cape was



Photo courtesy of Sandy Stewart

valuable, they were still stunned when they saw the land's appraised value and the fact that eight houses could be built on the land. Because of the high land value, the taxes that would come with the transfer of land to the heirs would also be extremely high. In addition, the property taxes for the land continued to increase every year and were becoming a financial burden.

The family decided to have a meeting to talk about the future of the land. They walked the property and came to the conclusion that their land could better serve the bay, the town, and their family if left in its natural state.

Around this time, the family was closing out their interest in a family business, which carried some

significant capital gains taxes to deal with. After consultation with the land trust, the family attorney, and an accountant, the family came up with a solution that met their goals. They decided to donate a conservation restriction (CR) on the majority of the land, except for one house lot, to the Orleans Conservation Trust. The CR reduced the amount in estate taxes resulting from the inheritance of the land, and the family was able to use the CR donation as a charitable gift to offset all of the capital gains taxes they would have had to pay for closing out their interest in the family business. Also, the property taxes for the land in the CR were reduced by 90 percent.

Two things surprised the family after conserving the land. First, the property taxes on the one house lot they retained without a CR went up. Since this house lot was adjacent to conservation land, it now had even greater value. The second surprise was an investigation by the IRS, which initially questioned the value of the CR donation. However, since the family had worked closely with their professional estate planning "team" led by Mark Robinson of The Compact of Cape Cod Conservation Trusts and followed their advice—using a qualified independent appraiser and clearly documenting the public benefits of the charitable gift of the CR—the IRS inquiry was resolved without incident.

In the words of Peter Johnson, Ellie's husband, "We are very appreciative of Mark Robinson's careful stewardship in guiding our family through this journey. We now have this beautiful piece of property that we continue to enjoy. Conserving the land was a nice coming together of the family. We are so happy that, with all the fun we've had on the land as a family, it will be passed on to future generations. It feels good that we not only prevented the degradation of the bay's water quality, we actually helped in our small way to protect the Cape's environment. When we are out kayaking, I love looking back and seeing the green trees on our land standing out among the surrounding houses."

bought your land for \$50,000, and it is now worth \$200,000, the capital gains tax is applied to the increase in your land's value of \$150,000. Placing a conservation restriction on your land is one effective way to lower its sale price and therefore the capital gain from the sale of your property. However, the sale of a conservation restriction or a bargain sale (see page 18) can also trigger capital gains liability. For a story about how one family was able to minimize taxes by balancing income from land conservation with a charitable gift of a conservation restriction, see the *Bill Rose story on page 27*.

Federal Income Taxes

These are taxes based on your income. These taxes can be reduced by a donation or a bargain sale of land or of a conservation restriction (see the “Donating or Selling Conservation Restrictions” section on page 16) by crediting you with a charitable donation.

Property Taxes

As land values and assessments increase, and municipal budgets decrease, local property tax burdens can be difficult for families to meet. Conservation restrictions (see page 16) and the Massachusetts Chapter 61 current use tax programs (see page 34) provide opportunities to reduce property taxes on your land.

Appraiser

Land is a valuable asset. Tax planning requires a good idea of your land's market value. An appraiser is a licensed professional with training and experience in determining the current market value of your land based on its location, characteristics, and the sale of similar properties in your area.

Though your local assessor's office lists an assessment of your land, this is often not a reliable estimate of the market value. Some banks and real estate companies offer appraisal services. However, bank appraisals done in consideration of a purchase, sale, or renegotiated mortgage are not necessarily reliable as an indicator of the actual market value of your property. Similarly, “market valuations” offered by real estate agents are also not a reliable indication of the market value of your property. And more importantly, neither of these types of appraisals is recognized by the IRS for tax deduction purposes or conservation grants.

For estate planning purposes involving conservation restrictions, it is essential to use a “*qualified* independent appraiser”—the only kind of appraiser recognized by the IRS. When choosing a qualified independent appraiser, it is important to work with one who has experience in valuing land for conservation purposes to learn what your land will be worth if you intend to sell or donate the land or the development rights for conservation. Donating land or a conservation restriction (see page 16) can reduce your income tax and other tax burdens. To use these donations as a charitable deduction, the landowner is required by the IRS to have the land appraised by a qualified independent appraiser to determine the value of the deduction. There are also ways in which to document and increase the value of the land (e.g., subdivision plan, timber appraisal) that can in turn increase your tax deduction for conserving the land. To find an appraiser with conservation experience,



© Daily Hampshire Gazette

Land is a valuable asset. Tax planning requires a good idea of your land's market value.

visit www.masswoods.net. or talk to your local land trust. For an example of how important an appraisal can be to help determine your plans for your land, *see the Peter and Ellie Johnson story on page 32.*

Forester

Land Management

If you want to keep all or some of the land in the family, it will be important to pass on to your children your knowledge of the land and its past management. This may include your goals for the property and how they have been implemented in the management of the land. You may also want to provide information about the people you have worked with and what programs your land may be enrolled in. Communicating this information to your family can help them become good stewards of the land.

If your family does not already have one, an important professional to contact in regard to your forestland's management is a forester. A forester is a licensed professional who can help you evaluate your land management options, including determining the value of your timber for a land appraisal. A forester can also do research to find your deed, which contains important information about the ownership of your land and how it is currently set up to be transferred. See page 23 for a description of ownerships and the implications for transferring land. *See the Thompson family story on page 28* to learn how they use forest management to meet their family's goals.

To find a forester working in your town, visit www.masswoods.net.

Lowering Property Taxes

Paying the property taxes on the land may be an issue for your family. There are three current use tax programs (Chapter 61—forestry, 61A—agriculture, 61B—open space and recreational land use) that give landowners an opportunity to significantly reduce their property taxes in exchange for keeping land undeveloped and in a conservation use. Although these “Chapter” programs do not provide permanent protection for your land, they can be used in combination with other land conservation tools. For more information about the Ch. 61 programs, visit www.masswoods.net. *Read the Sterling family (see page 17) and the Thompson family (see page 28) stories* to learn how these families used current use programs to achieve their estate planning goals.

For more information about these programs, including a description of the tax savings, visit the “Landowner Programs” page on www.masswoods.net. Contacting a forester can also be a good way to learn more about the Chapter 61 current use tax programs.

Property taxes should be lowered if a conservation restriction is placed on the land, removing its development potential and therefore reducing the assessed value. In some cities and towns, this may happen automatically. In others, you may need to work with the local assessor. Another option would be to enroll your conserved land in a Chapter 61 program to realize a reduction in property taxes. Contact your local assessor for more information.

Tools used:

- Nominee trust

You never really know what is around the corner. Horace and Doris Coolidge lived in a farmhouse on 230 acres in Petersham, Massachusetts, that had been in the family since the 1930s. As Horace entered his 80s, he and Doris wanted above all to make sure the farm remained in the family. They were not interested in permanently conserving the land because they did not want to eliminate any options for their son, Curt, or his two sons in the future. Horace and Doris knew that Curt and his family loved and appreciated the land and were not going to develop it.

But the Coolidges needed to begin transferring the house and land to Curt and his wife, Kathy, to avoid the Massachusetts estate tax. They turned to their attorney, Liz Sillin, who helped them utilize a tool that is relatively unique to Massachusetts—a nominee trust. A nominee trust is not a true trust, rather it is an agency relationship, which means it allows for the transfer of interests of property, but a new deed does not need to be created with each transfer.

Horace and Doris liked that the details of the nominee trust, such as its beneficiaries, were not required to be disclosed, and when they died, their estate did not have to pass through probate. In a nominee trust, the trustee acts at the direction of the beneficiaries, which also sets it apart from traditional trusts. There are no annual fees or other costs for maintaining the nominee trust.

In establishing the trust, Horace and Doris needed to get their house and land appraised, which cost approximately \$5,000. Though expensive, the appraisal was essential for establishing the value of the property and thus the value of each interest that would be transferred to Curt and Kathy. Horace and Doris began gradually gifting interests in the trust at the maximum annual exclusion for gifts. Thanks to the nominee trust, this was a very simple process that lowered the value of the assets that Horace and Doris owned.



Photo courtesy of Horace and Doris Coolidge

Horace fell ill a couple of years later. When it became clear that he would not recover from his illness, Curt and Kathy arranged to have the remainder of his interests transferred to them. By not transferring his assets automatically to Doris, they kept Doris's estate tax burden low, avoided probate, and did not need to file an estate tax return.

Two years later, Doris died suddenly. Thankfully, her assets were below both Massachusetts and the U.S. estate tax threshold, and all her remaining interests in the nominee trust were transferred to Curt and Kathy without triggering any taxes. At this time in their lives, Curt and Kathy would have struggled to pay any taxes and could instead use Horace and Doris's remaining assets to repair the farmhouse and begin the process of turning the land into an active farm again. The property remains in the nominee trust, and Curt and Kathy plan to use the same process to begin transferring ownership to their two sons in the near future.

SECTION THREE

Taking Action:
Take the First Step *and*
Keep Moving Forward





The decisions (or lack of decisions!) you make about your land will have financial and personal impacts that last long beyond your passing. You have the opportunity to ensure that your legacy is a positive one by actively planning for the future of your land. Failure to plan can be more expensive and can create conflict in your family. Don't leave the future of your land and your family's relationships to chance.

Successful estate planning can take years to implement. Be patient. Armed with this publication and the Deciding the Future of Your Land Checklist on page 38, take the first step—any first step!—and keep moving forward. Based on your goals and informational needs, contact one of the professionals listed in the checklist. To find a conservation-based estate planning professional, visit www.masswoods.net.

Remember, until your plans are implemented, your legacy is only a good intention. Make it a reality by planning for the future of your land.

Start today!



Deciding the Future of Your Land Checklist

Gather information about your land.

Gathering information about your land will be helpful for both the family meeting and when working with professional advisors.

- Property address and location**
- Holder(s) of title:** Check the deed to see how title is held. Obtain copies of the deed(s) of your land at the Registry of Deeds (www.masslandrecords.com).
- Acreage:** Determine the amount of acreage your land has from the local assessor's office, the deed, or a survey (if there is one).
- Current value:** Get an appraisal from a qualified independent appraiser to determine current value. If you do not have an appraisal when you begin estate planning, use the assessed value of the land as a rough estimate. (Also, see the "Appraiser" section on page 33).
- Annual taxes:** Determine the amount of annual property taxes from a recent tax bill or the local assessor's office.
- Mortgage:** Find the mortgage amount (if any) owed on the land from the bank that holds the mortgage or the monthly bill statement.
- Road frontage:** Find the road frontage from a property survey, the deed, or the local assessor's office.
- Town zoning:** Contact the local planning board to find out how the land is zoned—residential, commercial, or otherwise—and also what the minimum size is for a building lot in your zoning area (e.g., minimum lot size is 2 acres with 200 feet of road frontage).
- Chapter 61, 61A, or 61B Enrollment:** If you do not know this already, contact your local assessor's office or the Registry of Deeds to find this information, which is recorded as a lien on the deed.
- Natural resources:** Identify significant natural resources on your land or nearby land. The presence of natural resources will be of interest to potential conservation organizations. Contact your local land trust, local conservation commission, or town planner for information.



Take the next step.

Take family input and professional advice, then list your next three steps below, and then take them.

1. _____

2. _____

3. _____

- Estate planning professionals:** List any professionals you are currently using or have worked with in the past, including surveyor, lawyer, accountant, financial planner, and forester. Rate your satisfaction with their work.

- Land conservation organization or agency:** List any land trusts or state conservation agencies that you may have experience working with or whose mission you support. These may be helpful partners, and contacting one is a good first step.

- Friends or neighbors:** Write down the names of people with experience with a conservation organization or estate planning whom you can talk to about their experience.

- Important documents:** Make copies of key documents such as a will, management plan, plot and/or survey plans, farm plan, historical plans, and maps. Contact the Registry of Deeds for copies of deeds, mortgages, and liens.

- Additional assets:** Determine financial resources beyond the land (e.g., bank accounts, CDs, mutual funds, IRA, insurance, personal property).

Hold a family meeting (if a family meeting is right for you).

- Find out how your family feels about the land and their goals and needs (personal and financial).

- Develop goals for the land based on the needs of you and your family.

- Determine information needed to move forward and next steps.

- Decide who is responsible for the next steps and assign deadlines.

- Set meeting dates as needed to review information and make decisions.

continued on page 40



Work with a professional.

Determine the best type of professional to start working with, talk to friends and neighbors to find a reputable professional, and make an appointment to meet a professional. To find any of these professionals, go to the “Find A Local Professional” page on www.masswoods.net.

- Land protection specialist:** Provides land conservation options and guidance to meet the conservation goals of you and your family.
- Estate planning attorney:** Writes a will or trust that includes your wishes for the land and can help you determine your best options for land ownership.
- Financial planner:** Reviews your current financial situation and anticipates future needs.
- Tax attorney or CPA:** Develops strategies to minimize your taxes, increasing the amount of assets given to your family.
- Appraiser:** Determines the value of your land and the value of a conservation restriction.
- Forester:** Provides information and guidance about the Chapter 61 current use programs to save property taxes, develops an estimate of timber value, and provides land management options.

Conduct a periodic review of your estate plan.

- Life and circumstances change.** Revisit your plan every one to two years.

Additional Resources

- Visit www.masswoods.net to find an estate planning professional; learn more about land conservation tools; find a land trust, public conservation organization, or forester working in your town; read about landowners who have used estate planning to meet their goals.
- Chapter 61 Programs: Understanding the Massachusetts Ch. 61 Current Use Tax Programs (www.masswoods.net/sites/masswoods.net/files/Ch-61-Web.pdf)

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This publication can help you decide the future of your land by providing information on

- family communication;
- professionals who can assist you and how to find them;
- stories of other landowners who have found ways to use their land to meet their needs and those of their families;
- how to take the next step in deciding your land's future;
- additional resources.

