Legal and Business Structure

SRDC

Partnering Organizations

ncrcrd NORTH CENTRAL REGIONAL CENTER FOR RURAL DEVELOPMENT

NC STATE UNIVERSITY

SRDC Southern Rural Development Center

PURDUE UNIVERSITY | Institute for Family Business

MISSISSIPPI STATE UNIVERSITY DEPARTMENT OF AGRICULTURAL ECONOMICS

Purpose:

Succession planning encompasses many emotional and financial aspects of a family and a business, making decisions and moving forward more difficult. This research-based curriculum with comprehensive handouts integrated will give participants the confidence they need to learn strategies for moving succession forward with their property or business. Both soft and hard skills are covered in the materials and will empower owners to develop and implement their succession plan.

Funding to develop this training provided by: USDA & USDA Farm Service Agency U.S. DEPARTMENT OF AGRICULTURE

Primary Authors

Renee Wiatt
Research and Extension Specialist | North Central Regional Center for Rural Development
Family Business Management Specialist | Purdue Institute for Family Business
Department of Agricultural Economics | Purdue University, West Lafayette, IN

Dr. Kurt Smith
Assistant Professor of Forestry and Environmental Resources
North Carolina State University

Dr. Rebecca Smith
Associate Extension Professor | Mississippi State University Extension

Enter presenter information on this slide

5

Important notes before we begin:

These materials are intended to present general information on succession planning.

The information may not be applicable to every state or territory.

These materials do not provide legal advice. Specific advice should be obtained from an attorney or another professional well versed in the facts and circumstances related to the individual seeking advice and the jurisdiction where the property is located.

6

PROTECTING YOUR INFORMATION

- No personal stories.
- General questions are welcome.
- Personal questions should be asked outside of the group setting.

7

Defining Succession Planning & Estate Planning

When we say:	We are referring to:
Succession Planning	The plan for transfer of management (decision-making abilities and authority) and/or ownership (shares, farm or forest assets, etc.) during the life of the owner(s)
Estate Planning	The plan for transfer of personal assets and property that will transition after the owner's life to designated beneficiaries

*Disclaimer: The terms *Succession Planning* and *Estate Planning* are defined differently depending on state/region. However, for use of this training, the definitions above are implemented.

8

Defining Generations and Roles in Succession

When we say:	We are referring to:
Successor	The junior generation in the land/business, next individual(s) who will manage and/or own the land/business
Incumbent	The senior generation in the land/business, current owner/manager of the land/business

Defining Businesses and Land

When we say:	We are referring to:
Businesses	Entities that could be farms, an LLC, sole proprietorship, land in a trust, corporation, company, and/or partnerships
Land	Any type of land, including but not limited to: forests, bare land, vacant land, farmland, pasture, and land with buildings/barns

TOPICS TO EXPLORE

MODULE #3 LEGAL AND BUSINESS STRUCTURES	**Intestate Title: Tools for Remediation and Prevention**
	Transfer Options
	Ownership Structure & Transfer
	During Life Transfer or After Death Decisions
	Before You Visit Professional Advisors

Purpose of Module #3

To introduce primary tools for the transfer of land and business interests.

Intestate Title:
Tools for Remediation and Prevention

INTESTATE TITLE

Remediating the Past

Prevent in the Present

Planning for the Future

INTRODUCTION

It is noteworthy that 40% of the nation's farm and forest land is owned by individuals aged 65 and older, and more than 370 million acres will change ownership by 2040 through succession executed by wills and probate. This creates a great deal of vulnerability to accelerating land fragmentation throughout the United States and represents one of the largest transfers of intergenerational wealth in history.

Smith, K.; Cubbage, F. Land Fragmentation and Heirs Property: Current Issues and Policy Responses. Land 2024, 13, 459. https://doi.org/10.3390/land13040459

These land transfers are important for keeping both forest and farmlands for succeeding generations. Intergenerational land transfer depends on the abilities of families to work together to find the best solution for their situation. Differences among family members in values, goals, and critical skills can often lead to disaster.

Succession planning is the human side of estate planning. This training will help you assist landowners by describing strategies that will assist landowners in ensuring a successful intergenerational transfer of land, wealth, and assets occurs from one generation to the next.

LACK OF SUCCESSION AND ESTATE PLANNING HAS LED TO PAST PRESENT AND FUTURE CHALLENGES:

Past	Present	Future
Heirs Property	Unresolved Heirs Property	Development
Theft	Partitioning	Roads
Fraud	UPHPA (not in all states)	Loss of Prime Agricultural Lands
Lack of Equal Access USDA	Land Fragmentation	Greater Land Fragmentation
Loss of Intergenerational Wealth	Loss of Intergenerational Wealth	Inventory-Food and Fiber
Land Loss: African American and Native American	Loss of Prime Agricultural Land	Continued Loss Intergenerational Wealth

COMMON TRIGGERS TO ESTABLISH OR REVIEW YOUR SUCCESSION AND ESTATE PLANS

Marriage or Divorce: The presence or absence of a spouse could have a tremendous impact on how your estate is eventually divided.

Children and Adoption: Revisit your will and other documents to make sure they include all your children (natural, adopted and/or stepchildren) as you would like. The government may not divide your assets the way you want if you don't have a written estate plan in place.

Buying or Selling a Home: The purchase or sale of real estate can dramatically impact the value and liquidity of your estate. A will could also ensure that your estate doesn't wind up mired in probate court.

New Financial Accounts: Changes in your finances, such as receiving an inheritance. It should be reflected in your estate plan so that your executor will have an accurate listing of your financial assets.

Starting or Selling a Business: Business succession planning provides an outline of the way that your business is to be managed. You may need to establish or update your plan to address changes.

Moving to a New State: When you move to another state, you should also plan to review your succession and estate documents. Since laws vary from state to state, you want to be aware of the differences and make changes accordingly.

Death: There is always the possibility you may outlive some people named in your estate documents. Whether it is a beneficiary, executor, appointed guardian, durable or medical power of attorney designee, make sure to update your relevant documents to fill any gaps created by the unfortunate loss of a friend, partner, or family member.

Medical Condition: A serious medical diagnosis or sudden accident should prompt an urgent review of your estate planning needs. It may be time to change your designations regarding who you want to handle health care decisions or financial business if you become incapacitated.

Change in Wishes: What you want for your estate plan today might not be what you want in the future. If you've had a change of heart regarding how you want your estate handled, work with your attorney to make sure your wishes are clear, ad reflected in your legal documents.

TRANSFER OPTIONS

EDUCATE YOURSELF BEFORE GOING TO VISIT YOUR ATTORNEY, TAX SPECIALIST AND FINANCIAL ADVISOR.

- Know your options for transferring your land or property.
- Know about the different forms of ownership you can create or have in place for your heirs.

COMMON TRANSFERRING YOUR LAND OPTIONS

Sell Your Land	Immediate cash removes many decisions from heirs
Donate Your Land	If Heirs have no interest and an organization or has interests that align with your goals
One Successor via Trust/Will	When there are heirs with clear interest in the property and business
Divide Among Successors Via Trust/Will, or While Alive	Makes clear who gets what via division
Leave Undivided to All Successors Via Trust/Will or While Alive	Requires a lot of cooperation and often leads to family disputes
Do Nothing Government Will Decide	Each state has a specific formula they will follow to distribute your estate

OPTION 1: SELL YOUR LAND OR BUSINESS

This could occur with individuals, another business or a non-profit organization.

If you have a relationship with purchasers, you may want to consider building their interest in the land or business.

You may plan to sell the land or business and put that money towards other uses, such as trust funds, investments, or insurance.

OPTION 2: TRANSFER OF DEED ON DEATH

A Transfer on Death Deed, or TODD, is a simple way to transfer real estate to someone else after you die.

With a properly recorded Transfer on Death Deed, no probate is needed to transfer the real property.

OPTION 2: TRANSFER OF DEED ON DEATH

A **Transfer on Death Deed** lets you keep all ownership rights to the property during your lifetime, so you can sell it, or use is as collateral on a loan. The Transfer on Death Deed takes effect upon your death, so the property never becomes part of your estate. When you die, your property interest passes to the person you named in the Transfer on Death Deed without any probate action.

Each state has specific requirements for a TOFF. Consult a lawyer experienced in transfers of real property in your jurisdiction.

STATES WHERE YOU CAN MAKE A TODD DEED OR BENEFICIARY DEED

Alaska
Arizona
Arkansas
California
Colorado
District of Columbia
Hawaii
Illinois
Kansas
Maine
Minnesota
Mississippi
Missouri
Montana
Nebraska
Nevada
New Mexico
North Dakota
Ohio
Oklahoma
South Dakota
Texas
Utah
Virginia
Washington
West Virginia
Wisconsin
Wyoming

LADY BIRD DEEDS AND ENHANCED LIFE ESTATES

A lady bird deed/enhanced life estate is a deed that allows a real estate owner to transfer a contingent ownership interest in a piece of property to specific and designated beneficiaries while still retaining an enhanced life estate. This means that a beneficiary's claim to the property will not vest until the property owner dies. It provides some protection for losing the estate through medical bills after death, and the owner can still sell or do whatever they want without consulting anyone.

FLORIDA, MICHIGAN, TEXAS, VERMONT, NORTH CAROLINA, AND WEST VIRGINIA-HAVE THEM!

*FUNCTIONS SIMILAR TO TODD, BUT WITH SOME KEY DIFFERENCES. It's important to consult an attorney in the state in which you live. Laws are constantly changing and updating.

THERE ARE SEVERAL RISKS ASSOCIATED WITH TODD'S

One of the main risks is:

A beneficiary who receives real estate through a transfer on death deed takes title subject to the liens. encumbrances, claims and interest affecting the property at the time of death of the transferor.

One of the main benefits is:

Avoiding the probate process and expense

*As always talk to your attorney this tool if applicable in your state.

OPTION 3: DONATE THE LAND

You may choose to donate your land and the timing, method and amount of the donation will matter in your estate plan because they are related to taxes, gifting amounts or other implications for the organization that receives your donation.

Should you go this route, have open conversations or meetings with the organization of your choice as well as your attorney and financial advisor to create a timeline that will work for all parties involved.

OPTION 3: DONATE THE LAND

Organizations often have gift policies that may require you to provide information as to title, environmental and value. The IRS has rules and forms addressing gifts of property. You need to consult an attorney familiar with donating real property.

OPTION 4: SELECT ONE SUCCESSOR

In this case, one individual will receive your land regardless of how many successors you have.

For example, you may have one successor who is qualified to receive the land while the other successors could receive personal property, money, or life insurance, which are discussed in more detail below.

You can complete the transfer of your land via a will.

Establishing a single successor is a valuable strategy if your interest is in keeping your land or business intact.

OPTION 5: LEAVE THE LAND UNDIVIDED TO ALL SUCCESSORS

For this option, you can either leave the land undivided to your successors in your will or you can use a form of ownership to transfer the land to them while you are still alive. There are several types of ownership options which we will cover.

OPTION 5: LEAVE THE LAND UNDIVIDED TO ALL SUCCESSORS

It is critical that your successors have a good working relationship with each other because this ownership form will function in many ways as a business, with everyone holding a 100% interest together.

This potentially creates heirs' property, at minimum tenants in common.

***NOT AN IDEAL OPTION IF AVOIDABLE

*Common legal remedies: Tenants in Common Agreement, LLC, Trusts

OPTION 6: DIVIDE THE LAND OR BUSINESS AMONG YOUR SUCCESSORS

This option divides the land or business among your successors and can be accomplished via will, deed or other forms of ownership.

You might select this option if future land management would benefit from individual ownership or management. This could be the case if your children have difficulty cooperating.

**This option will require you to divide the land/business which could entail surveys, etc.

Option 7: Do Nothing

**NOT AN IDEAL OPTION

This option means that you develop no plan for the outcome of your estate.

Doing nothing will result in a default form of ownership upon your death and will depend upon your number of direct heirs and the laws of your particular state.
It will either be sole ownership or joint ownership with the right to survivorship and will follow state laws.

Option 7: Do Nothing

There will be no planning for inheritance taxes or estate taxes. Your direct heirs will deal with the consequences of you having no plan.

Each state has a different protocol for how assets are handled and distributed.

OWNERSHIP STRUCTURE & TRANSFER

37

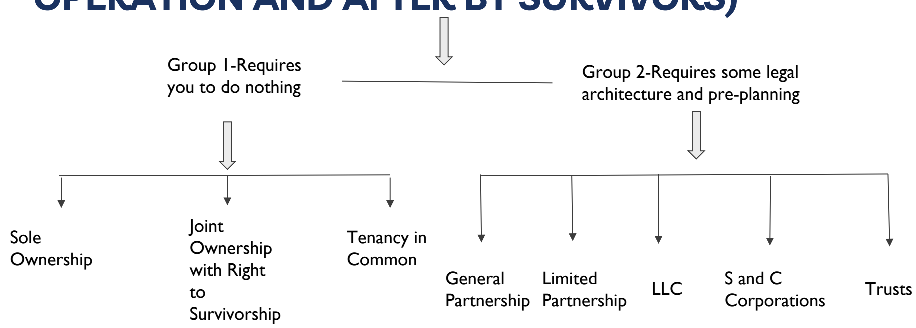
Two Categories Ownership Transfer:

GROUP 1 - Will happen automatically.

GROUP 2 - Requires legal architecture, can be done during life or after death.

38

TWO GROUPS OF OWNERSHIP FOR TRANSFER OF LAND OR BUSINESS (DURING LIFE OPERATION AND AFTER BY SURVIVORS)



39

SOLE OWNERSHIP:

SOLE OWNERSHIP, JOINT OWNERSHIP, TENANCY IN COMMON

Sole Ownership:

This simplest form of ownership is where one individual holds a legal title and exclusive rights of possession. They legally make all the decisions. This ownership form can be good and bad. Setup is simple and low-cost, and taxes are reported by the individual. This ownership has no liability protection and can only be transferred via will or deed. The sole ownership ends when it is transferred out of the owner's hands.

40

JOINT OWNERSHIP WITH RIGHT OF SURVIVORSHIP

- An ownership where two or more owners share an undivided interest in the property is simple and inexpensive to set up.
- Taxes are reported by each owner.
- This ownership offers no liability protection.
- Upon the death of a co-owner, the others automatically assume ownership. If one owner remains, it reverts to sole ownership.
- If one owner wants to sell their share, some state allow a sale. Other states require obtaining consent from all other owners, and they cannot force a sale.

TENANCY IN COMMON

This is joint ownership without the right to survivorship. This has several implications.

First, interests can be transferred via a will and thus will go through probate.

Second, owners can force a sale or sell their interest without consent from all other owners. In this form of ownership, owners can own different proportions (percentages) of the property.

TENANCY IN COMMON

This ownership will continue until it is sold or until there is only one owner, at which point it will revert to sole ownership.

The setup is simple and low-cost, and taxes are reported by each owner.

This type of ownership offers no liability protection.

DURING LIFE TRANSFER OR AFTER DEATH DECISIONS

GENERAL PARTNERSHIP

This is where two or more co-owners or partners establish an organized for-profit entity.

Setup is more complex and expensive. The partnership will file a tax form in addition to individual taxation. The partnership itself will not pay taxes.

Partners can have unequal interest in the business but are liable for all its debts and contracts. The partnership may terminate in the case of death, bankruptcy or exit by a partner, but its interest can be passed on to heirs or disposed of in a buy-sell agreement.

GENERAL PARTNERSHIP

No formal agreements are legally required for this ownership, but a written partnership agreement is recommended because it defines management structure, individual responsibilities, and share.

A buy-sell agreement is also advisable since it identifies provisions for selling partnership interests. The transfer of this type of ownership goes through probate (U.S. Small Business Administration 2023).

LIMITED PARTNERSHIP

This only differs from a general partnership in that it offers limited liability protection to some (“limited”) partners. General partners are managers and thus assume personal liability.

Limited partners only own shares and thus enjoy protection from liability but will lose that protection if they become general partners.

Limited partnership interests can also be used to help involve younger generations, allowing them to become invested in the partnership.

LIMITED PARTNERSHIP

Regulations vary by state, and the formation of a limited partnership must be reported to the state.

The business can end with the death of a general partner, but limited partnership agreements, wills and written agreements can be used to avoid its dissolution. Taxes are filed like a general partnership (Cushing et al 2022).

LIMITED LIABILITY COMPANIES, OR LLC

This creates a for-profit entity that combines the liability protection of a corporation with taxation and the flexible structure of a partnership. All owners or members avoid personal liability, and they can define the management structure.

Interest can be transferred through gifting, sales, or a will. The lifetime of an LLC can be indefinite, depending on its setup and the laws of the state of organization. A written operating agreement is required.

LIMITED LIABILITY COMPANIES, OR LLC

Regulations vary by state, and the formation of an LLC must be reported to the state. Taxes are handled like a partnership (U.S. Small Business Administration 2023).

S- AND C- CORPORATIONS

These are entities that have rights and liabilities separate from their owners, or shareholders.

Corporations are heavily regulated, have a high setup cost, and must file their creation with the state.

Shareholders elect a board of directors who then appoint officers or others to make day-to-day decisions.

Corporations don’t have reduced capital gains tax rates and are taxed on their earnings.

C-CORPORATIONS VS. S-CORPORATIONS

C-Corporations are taxed as entities and shareholders pay taxes on dividends resulting in double taxation of earnings.

S-Corporations avoid double taxation but is limited in its number of shareholders and types of stockholders. Individual shareholders pay tax on their percentage of earnings.

TRUSTS

Another form of ownership that can be used to transfer land is a trust. Trusts are legal entities where there is separate legal ownership and beneficial ownership. This divides the management of an asset from the benefit of that asset. The grantor/settlor creates the trust and its provisions, the trustee manages the trust assets per its provisions, and the beneficiary benefits from the trust. It can be the same person or different people for one or both.

TRUSTS ARE FLEXIBLE

Trusts are perhaps the most flexible tool used in estate planning, but they can also cause the most problems if they are not constructed carefully. The trustor/settlor has the freedom to develop why, how, and when assets will be dispersed to the beneficiary as well as determine the amount of discretionary power the trustee has.

TRUSTS: DEAD OR ALIVE

The trustor/settlor can elect to have a trust disperse assets while they are alive (living trusts) or deceased (testamentary trusts).

IRREVOCABLE VS. REVOCABLE

The trustor/settlor also decides what level of control they want over the assets in the trust; it can be permanent (irrevocable) or subject to change (revocable).

A revocable trust is useful because it can be amended or revoked at any time. ***An irrevocable trust*** is useful because it helps move assets out of the grantor's/settlor's estate, but it cannot be easily amended and can leave the trustee with too little or too much discretionary power.

FARM CONSIDERATIONS

57

SMALLER FARMS

- For smaller operations with small children in the family, it may make sense to use a C corporation due to:
  - Reduced payroll taxes
  - Commodity wages
  - Tax-free fringe benefits
  - Earned Income Tax Credit possibility
  - Fiscal year options

58

MEDIUM AND LARGER FARMS

- Preference for entity selection is LLC due to:
  - Similar payroll tax savings to Corporation(s)
  - Flexibility in allocation of losses
  - Ease of transfer of assets in and out without tax cost
  - Step-up in basis in all assets owned by member at death
  - Legal protection same as corporation
  - Discounts for gift and estate tax planning
  - Ease of transfer of units to children and grandchildren

59

HOW DO WE HANDLE MACHINERY TRANSFER?

- Machinery may be held in separate LLC entity:
  - Liability protection
  - Get Trucks and Trailers away from other assets
  - Flexibility in Section 179
  - Have to watch income limitations
  - Step-up of basis upon member’s death

60

OTHER TOOLS-LEASING

Leasing your land may be an option if you want to maintain some control over your land or rely on it for income. Leasing can also allow you to begin training your successors or allow an experienced manager to keep working the land after ownership is transferred to the next generation.

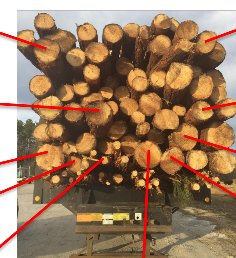
OTHER TOOLS-CONSERVATION EASEMENTS

A conservation easement legally restricts *certain private property rights* of a landowner in exchange, usually for money, paid by an NGO or government agency, for the conservation of other values into perpetuity or some fixed period, and will transfer with the land if it's sold or deeded. Federal income tax credits may also be available for qualified conservation easements.

CONSERVATION EASEMENTS

Think of property rights as a bundle of sticks where each stick represents what you can do with your land, such as subdividing, developing, farming, or harvesting timber. A conservation easement takes one or more of those sticks away from the bundle and may restrict operations on your land.

"THE BUNDLE OF STICKS" (ALL SEVERABLE)



BEFORE YOU VISIT PROFESSIONAL ADVISORS

BEFORE YOU VISIT YOUR ATTORNEY, CPA OR FINANCIAL PLANNER …

- Assess your resources
- Consider the abilities of your heirs
- Set goals, both long and short term
- Do your homework
- Attorneys and CPAs are expensive, know what you want to accomplish in advance.
- Gather your documents
- Talk with your family
- Learn about your options

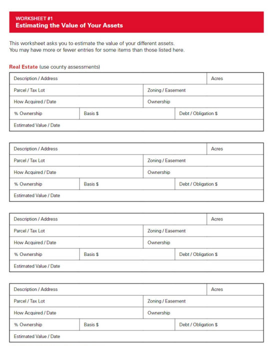
In short…create a blueprint that reflects your goals and desires and turn it into a succession and estate plan.

HANDOUT: ESTIMATING THE VALUE OF YOUR ASSETS

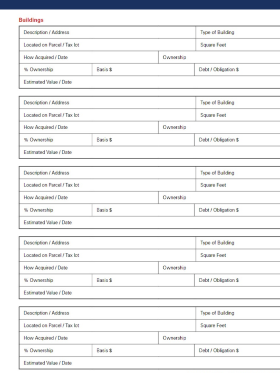
This worksheet will create a record of the inventory of all assets and a rough estimate of the value of each.

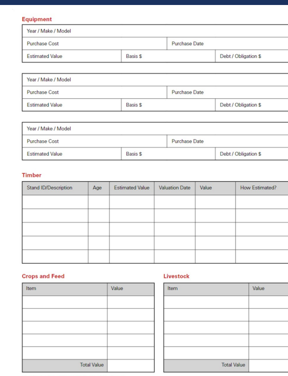
Consulting your local tax assessor's office is a good starting point for learning the value of land and buildings.

It is best to revise and update this inventory every five years to record changes in your assets and current values.

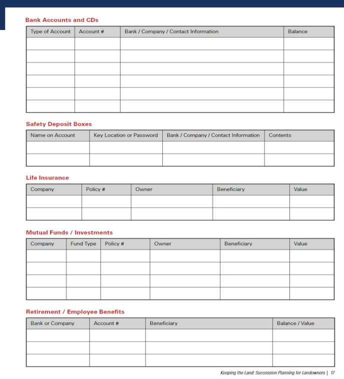


LISTING ASSETS CONTINUED





LISTING ASSETS CONTINUED



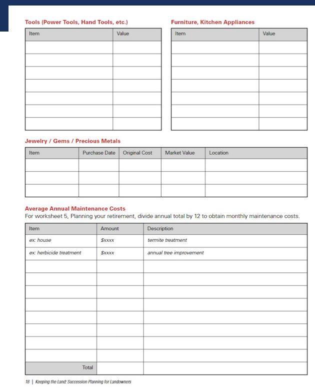
Bank Accounts and CDs

Safety Deposit Boxes

Life Insurance

Mutual Funds / Investments

Retirement / Employee Benefits



Tools (Power Tools, Hand Tools, etc.)

Furniture, Kitchen Appliances

Jewelry / Gems / Precious Metals

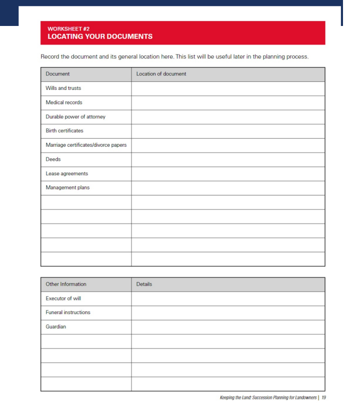
Average Annual Maintenance Costs

69

HANDOUT: LOCATING YOUR DOCUMENTS

This worksheet will record the location of important legal and financial documents such as deeds, titles, bank statements, insurance policies, and wills.

This will help you and others locate the documents when needed.

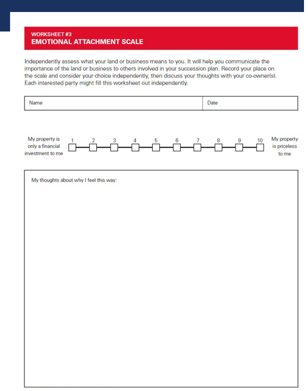


WORKSHEET #2
LOCATING YOUR DOCUMENTS

70

HANDOUT: EMOTIONAL ATTACHMENT SCALE

This form will help you reflect on how you feel about your land and/or business. This should encourage you to think about your passions related to your land and business and what is important to you. This could include preserving your family heritage, being a good steward of the land, or providing income for your family.



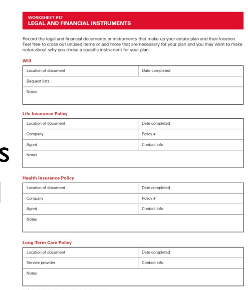
WORKSHEET #3
EMOTIONAL ATTACHMENT SCALE

71

HANDOUT: LEGAL AND FINANCIAL INSTRUCTIONS

Legal and Financial Instruments

Record the legal and financial documents or instruments that make up your estate plan and their location. Feel free to cross out unused items or add more that are necessary for your plan and you may want to make notes about why you chose a specific instrument for your plan.

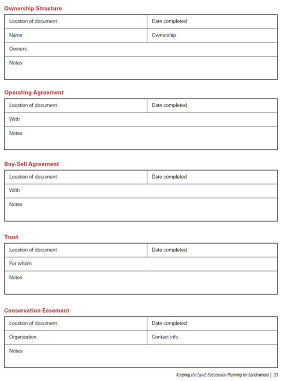


WORKSHEET #12
LEGAL AND FINANCIAL INSTRUMENTS

This form records the legal and financial documents or instruments that comprise your estate plan and their location.

72

LEGAL AND FINANCIAL INSTRUMENTS



Ownership Structure

Location of document	Date completed
Name	Ownership
Owners	
Notes	

Operating Agreement

Location of document	Date completed
With	
Notes	

Buy-Sell Agreement

Location of document	Date completed
With	
Notes	

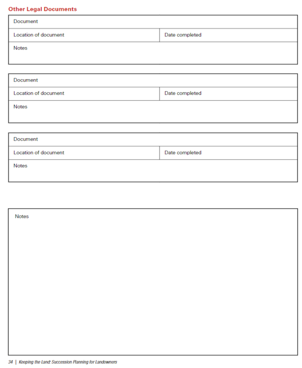
Trust

Location of document	Date completed
For whom	
Notes	

Conservation Easement

Location of document	Date completed
Organization	Contact info
Notes	

Keeping the Land: Succession Planning for Landowners | 33



Other Legal Documents

Document	
Location of document	Date completed
Notes	

Document	
Location of document	Date completed
Notes	

Document	
Location of document	Date completed
Notes	

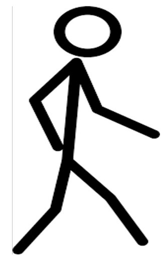
Notes

34 | *Keeping the Land: Succession Planning for Landowners*

THERE ARE MANY TOOLS OUT THERE!

Here is one that is easy and simple to use

It will serve as a tool to organize your thinking and help you map out your goals and next steps to accomplishing them



Let's walk through it…

NOW YOU'RE READY TO GO!

You're now clear headed and clear eyed about what you want to do, why and who will be a part of it. Take this information to a professional to help you codify and craft your plan in a way that will work with your wishes and the laws of your state.

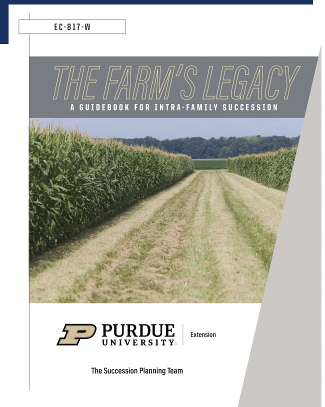
KEEPING THE LAND: SUCCESSION PLANNING FOR LANDOWNERS

To download a copy of this publication, visit content.ces.ncsu.edu/keeping-the-land or scan the QR code.

A tool with information as well as worksheets to build your succession plan with your heirs.

THE FARM’S LEGACY: A GUIDEBOOK FOR INTRA-FAMILY SUCCESSION

To download a copy of this publication, visit edustore.purdue.edu/item.asp?Item_Number=EC-817-W or scan the QR code



Questions

Please share your thoughts.

79