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Northwest Woodlands

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

CHANGING GENERATIONS

Succession of the Family Business

Key Estate Planning Ingredients

Tips for Successful Family Meetings

Estate Planning: Start Early and Be Patient

The Generation Transfer: How Do You Accomplish it?

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Clockwise from top left photo. Tom and Sherry Fox's grandchildren Camden Bull and Bennett Bull; photo courtesy of Sherry Fox. Ned Hayes with grandchildren Molly and Ben; photo courtesy of the Hayes Family. Evan McCausland helps plant the family tree farm in Oregon City; photo courtesy of John Poppino. Julie Stinson Schroff, Timber Stinson Schroff, Griffen Stinson Schroff and Fae Marie Beck on the Cowlitz Ridge Tree Farm Family Limited Partnership; photo courtesy of the Stinson Family.

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Planning for Success—A Case Study

By **CLINT BENTZ**

Keeping our families and our tree farms intact after Mom and Dad pass away is the biggest challenge facing the small woodland owner community today. This will not happen by accident, or by magic. One thing I know is that failing to plan for succession means that you are planning to fail. The following is a fictional case study based on work I have done with many families over the years.

Joe and Mary, age 70, came into my office to talk about their estate plan. Joe is a retired forester and Mary is a retired bookkeeper. They have four adult children and eight grandchildren. Mary keeps the books for their farm. During our meeting I found out the following about their family.

Joe Jr., their oldest child, is 45 and is married to Alice. This is their first marriage. They have two children in high school. Joe Jr. is a successful stockbroker and Alice is a homemaker. They live in a very nice home in a large city one hour away from the property. Joe Jr. is very involved in his career and has expressed no interest in returning to the farm.

Janice is 42 and is married to Frank. This is a second marriage for both of them. They have four children living with them, one in pre-school that is their child, two in grade school from Janice's prior marriage, and one in high school from Frank's prior marriage. Frank is a salesman and is down on his luck. Janice has worked several jobs and has had ongoing drug addiction problems. They live in a trailer on the farm rent-free and Joe and Mary give them regular financial assistance.

Alison is 40 and is in a domestic partnership with Ruth. They have no children. Alison is an environmental attorney and Ruth is an airline attendant. They live two states away and relations with the family are strained.

Seth, their youngest, is 27 and is married to Robin. This is their first marriage. They have two pre-school age children. Seth is an engineer and Robin is a homemaker. They are renting a house in the same city as Joe Jr. and Mary, one hour away. Seth loves the farm and wants to move closer to be part of things there. Since he is so much younger than the other children, he has a special and close relationship with his parents.

Joe and Mary inherited the base farm in 1950 and purchased two adjoining parcels in 1960 and 1975 from extended family members. They own these properties free and clear as husband and wife. The farm has been in the family since the 1890s. They now own 500 acres in three parcels. There is 10 million board feet of timber of various ages on the property, and they have been actively converting underproductive land to forestland for many years. They harvest a certain amount each year and rent out some pasturelands to a neighbor for cattle grazing for additional cash flow. The property is worth around $5 million. They also have around $200,000 in cash and investments. They have no life insurance.

The children grew up on the home parcel, where Joe and Mary still live. Janice and Frank live in a mobile home on one of the adjoining parcels. Under current zoning laws, it is possible to split up the three parcels, but they cannot create a fourth parcel. Joe does not want to see the property fragmented again after all his work to put the original farm back together.

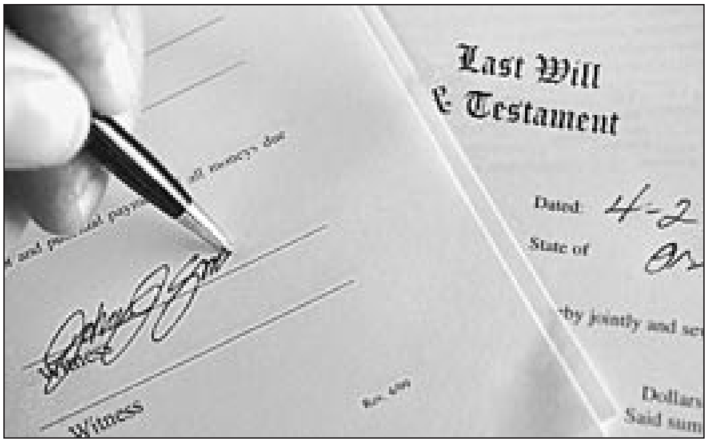
Joe and Mary each have wills that were drafted in the early 1970s (prior to Seth's birth), which leave everything first to each other, then equally to the three children. They have adequate cash flow from the farm, social security and Joe's Forest Service pension to live the modest lifestyle they prefer. We determined that if they passed away this year, under their current plan their estate tax liability would be around $1.8

million. In order to pay this tax, a substantial amount of timber would have to be harvested.

I asked Joe and Mary to separately write down what their long-range goals were for the property and their family, and what major challenges they saw in achieving these goals. In a perfect world, what would they like to see happen over the next 10, 20, 50 years? On a scale of 1-10, is the property simply a financial asset in their portfolio (1), or is it a priceless family heirloom to be protected at all costs (10)?

On a scale of 1-10, Joe was a 10 on the family heirloom scale. He wants to see the property stay together and remain in the family. He wants to see the legacy of over 100 years of family ownership of this property continue for many generations to come. He wants the lifetime of work he has put into the property to continue and bear fruit for future generations of the family. Joe is concerned that only Seth seems interested in the farm and does not know how to give this opportunity to Seth without financially harming the other children. He knows that Seth cannot afford to buy out his siblings' interest in the farm. He also wants to see a substantial reduction in the estate tax.

On a scale of 1-10, Mary was a 5 on the family heirloom scale. Mary also wanted to see the legacy continue, but more importantly wants to see more family unity and harmony. She is concerned that the children will not be able to work together on the property and this will be more of a problem than a blessing. She is concerned about Janice and Frank's financial condition and their ability to make do and manage money once she and Joe pass away. She is also concerned about possible competition between Seth and Joe Jr. regarding who will manage the property and how it will be managed. Neither one of them wrote anything down about Alison.



Having an up-to-date will protects your assets and creates security for your family.

After discussing what Joe and Mary wrote down, we came up with the following goals:

1. Keep the property in the family for multiple generations.
2. Enhance/preserve family unity.
3. Continue to provide help for Janice and her children.
4. Reduce the impact of the estate tax.

The next step for them was to discuss these goals with their children and get their feedback. Where were they personally on the 1-10 scale? Do at least some of their children share their vision and goals? They talked with each of their children individually over the next few months and came up with the following answers.

Joe Jr. was a 5. He does not need the inheritance and wants Mom and Dad to do whatever will make them happy. At this point in his life, he is very busy with his career and his children, but has thought that at some point he might like to retire back to the farm. He was also concerned about the legal liability of owning the property jointly with his brothers and sisters, and wondered how they would be able to make joint decisions regarding the property once Mom and Dad were gone.

Janice was an 8. She saw the property as important to her financial well-being and it was an important place for her children to grow up. She is also concerned about what will happen to her and where she will live once Mom and Dad are gone.

Alison was a 1. While she appreciated the long association of the family with the property, she has left that part of her life behind her and wants no part of it. She would prefer that the property be donated to an environmental organization rather than receiving an inheritance of money or property. She would like better relations with her brothers and sister, but does not know how to achieve that.

Seth was a 10. He wants to be an active part of the farm and to raise his children there. He is just starting his career and is flexible about how he organizes his life.

These answers were encouraging to us and gave us a foundation to begin our work. After additional discussions, we worked with an experienced estate attorney to form a Limited Liability Company (LLC) to own the property. This flexible ownership form grants liability protection to all the owners, protecting them from any legal problems that the LLC might have. A properly drafted LLC agreement also offers asset protection to the owners, protecting the farm from legal problems that the owners might have such as divorce and bankruptcy. Since LLCs have perpetual life, it also gave us an ownership form that would survive the death of the individual owners and allow for continuity of management over time. LLCs also allow for strong, centralized management of the property, which give us the ability for Mom and Dad to continue to operate the farm while bringing the other children in as owners.

At the same time, the attorney drafted a living trust for Joe and Mary, a new will and advanced directives for end of life health care decisions. Their investment accounts were transferred to their new living trust, and the title to the farm was transferred to the LLC.

We decided to bring the children into ownership now, rather than waiting until Joe and Mary's death. They wanted the ability to work with their kids over time to help them learn to work together as adults and business owners, and to give them the pride of ownership to encourage their participation on the farm.

Their next decision was whether or not to include the spouses of their children as owners of the LLC. They decided that due to the potential for divorce (as well as death and remarriage), that they would keep the ownership of the farm in the bloodline.

The next decision was what to do about Alison. She had clearly indicated she did not want to be part of this, but neither Mom nor Dad wanted to leave her out. She did indicate a willingness to reach out to the family to have better relations, so we decided to ask the other family members whether they wanted her to participate. They all said they wanted her in, so we decided to include her in the first round of gifting, invite her to the first family meeting and then see what happened as a result.

The final decision was what to do about Janice. They decided to write up a long-term lease for Janice to protect her right to continue living on the farm, but put some exclusions in the lease that required her to stay clean of drugs in order to continue living there. They also decided to gift Janice's LLC interest into a trust for her lifetime, rather than giving it to her outright. This was done to further protect her interest from possible creditors, and make sure that her three children inherited her interest after her death.

After appraising the farm and the LLC interests that were to be gifted, Joe and Mary each made gifts of their LLC interests equal to the value of their annual exclusion to each of their four children. They were each able to gift about 3.5 percent of their interest equally to their four children, leaving both of them with a 46.5 percent interest in the LLC.

As a result of this planning, they were well on their way to accomplishing their goals. They created an entity to own the property that will live until all the owners agree to end it, they created a forum (the family partner meetings) where family unity and harmony could be worked on, they provided for Janice and her children after their deaths, and they reduced their potential estate tax liability from $1.8 million to zero.

With this as a foundation, they were now ready to begin the real work of pulling their family together around the farm and infecting each other with the love and passion they share for this property and for each other. While their ultimate success is not guaranteed, they now have the tools to turn their dreams into reality.

There is no reason that your dreams have to die with you or that your property has to end up in the hands of strangers when you are gone. Families all over the United States are using this type of planning to protect their properties and draw their families together. Get started today by writing down your goals and where you are on the 1-10 family heirloom scale. Meet with a professional who can help you pull the plan together and make it work. It is a lot of work, but I can tell you from personal experience that it is the most rewarding thing you will ever do! ■

Clint Bentz *is a CPA, master woodland manager, and the managing member for Blue Den Ranch, LLC, a family tree farm partnership. He and his father, Ron, were named the 2002 National Outstanding Tree Farmers of the Year. Ron passed away suddenly and unexpectedly at the age of 66, leaving behind a legacy that the entire family has embraced. Clint can be reached at 503-769-2186 or cbentz@bcsllc.com.*