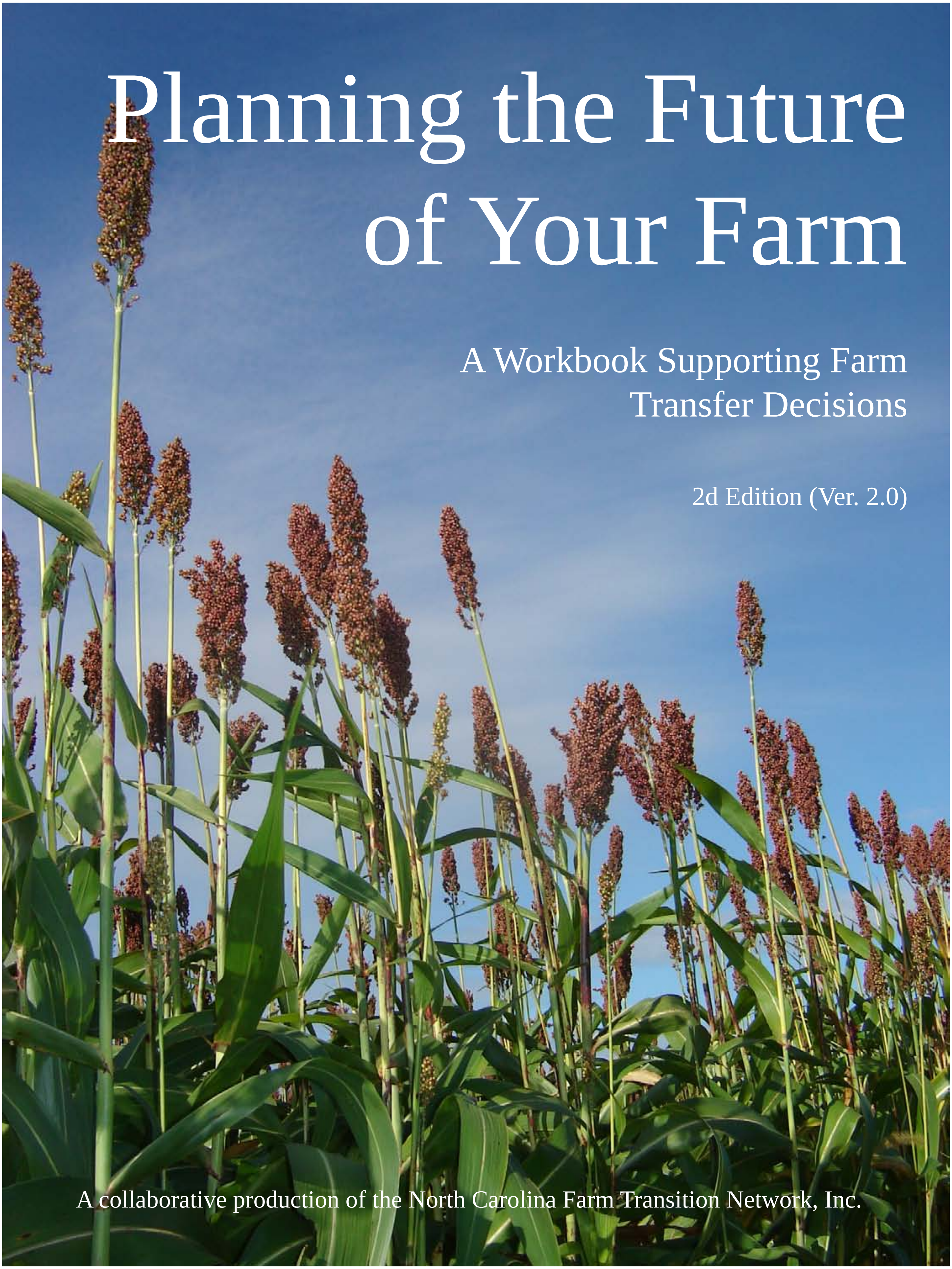
Planning the Future of Your Farm

A Workbook Supporting Farm Transfer Decisions

2d Edition (Ver. 2.0)



A collaborative production of the North Carolina Farm Transition Network, Inc.

Acknowledgements

The North Carolina Farm Transition Network, Inc. expresses its appreciation for the support of its advisers, funders, Board of Directors, field supporters and other organizations that helped produce this workbook and accompanying workshops, including:

Theodore Feitshans, Esq., Guido van der Hoeven, Dr. Geoff Benson, Gary Bullen, Rick Hamilton and Dr. Mark Megalos of North Carolina State University; Jesse Richardson, Esq., Alex White, Leon Geyer, Esq. and Dr. David Kohl of Virginia Tech; Brittany Whitmire, Tamara Cole, Michele Eley, and Marcie Joyner-Kirkpatrick of North Carolina A&T; Gordon Groover, Bill Whittle, Tom Stanley, Peter Callan, Michael Roberts, Michael LeChance of Virginia Cooperative Extension; Gerda Rhodes, David Isner, Travis Burke, Grace Lawrence, Bryan Cave, Kenneth Vaughan, Tommy Grandy, Thomas Campbell, Jeremy Delisle, Richard Boylan, Keith Wood, Melinda Roberts, Jeneane Davis, Taylor Williams and others of North Carolina Cooperative Extension; Dr. Phil Hamilton and Dr. Sandy Maddox of Mt. Olive College Lois G. Britt Agribusiness Center; NCFTN Board Members past and present: Scott Marlow, Steve Woodson, Gerry Cohn, Rusty Painter, Ed Jones, Jim Cummings, James Davis, Robin Kohanowich, Billy Guillet, John Vollmer, Mike Morton, Maximillian Merrill, Margeret Hamm, Dale Threatt-Taylor, and Steve Tate; John Baker and the staff of the Iowa Beginning Farmer Center; Steve Schwartz and the staff of California Farmlink; Meredith Fox Paczontek of the Ohio Countrywide Conservancy; the staff of the North Carolina Farm Bureau Federation; the staff of the Land Loss Prevention Project; the staff of the North Carolina Department of Agriculture and Consumer Services including Ray Starling, Dewitt Hardee, Holly Gilroy, and Debra Sloan; the staffs of the Southern Region Risk Management Education Center and the USDA Risk Management Agency; Joy Kirkpatrick of the Wisconsin Center for Dairy Profitability; Iowa State University Extension; the Amerian Agricultural Law Association; the Board of Directors of the International Farm Transition Network; the North Carolina Tobacco Trust Fund and the Golden LEAF Foundation, Inc.; the North Carolina Rural Center; and all the farmers, landowners and their family members who participated in our workshops and invited us onto their farms to teach us about farm family dynamics.

And of course, thanks to all of the landowners who found the first edition of this workbook useful in their planning, and took the time to help us make improvements to a second edition.

Planning the Future of Your Farm, 2d Edition, was published with support from the USDA Risk Management Agency (RMA) Community Outreach and Eduation program, and the Southern Region Risk Management Education Center (SRRMEC). Publication and printings of the first edition were made possible by the USDA RMA, SRRMEC, and the Golden LEAF Foundation.

Printed by Chapel Hill Printing and Graphics

Table of Contents

About the Second Edition (Ver 2.0)

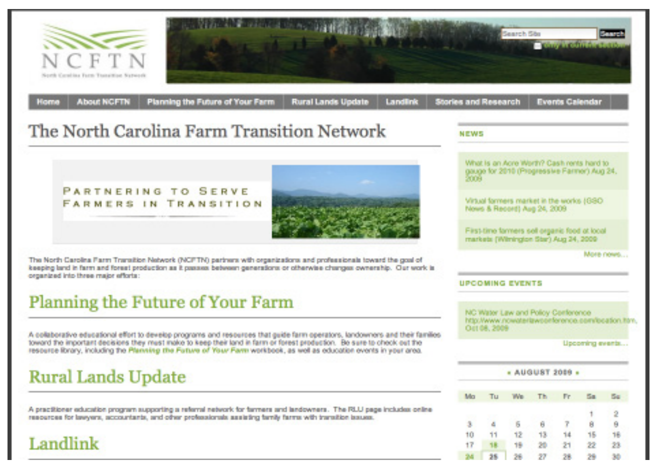
This workbook is an update of an earlier version published in 2006 for the families that own (and produce income from) farm, forest and horticultural land in North Carolina. It is specifically those who *want* to keep their farm in production and/or in the family as it passes to the next generation. For many more people, their farm is a business. For many, it is also place, a home, security, a mix of tangibles and intangibles that drive decisions about what to do with land wealth. This workbook was developed to help families harness these tangibles and intangibles into an orderly and productive process of planning.

Like the farm transfer process itself, the development of the *Planning the Future of Your Farm* workbook is a continuing project. The workbook is built from materials used in an ongoing education campaign - begun in 2004 - meant to help aging farmers and landowners make decisions that will keep farms in production into the next generation. It has been further refined through many hours of sitting at the farm kitchen table, helping families make sense of the seemingly overwhelming array of issues — retirement, healthcare, taxes, family harmony — surrounding a desire to "keep the farm in the family." Through this work in field, we continue to learn from the farm families which tools need improvement and what materials - based on frequency of questions - that should be included in following editions. Again, the process continues.

The earliest workshop agendas of this campaign focused squarely on transferring a family farm business. However, many workshop participants didn't know who in their family would farm the ground after they stepped back. Their kids were too young, had other careers, or had yet to commit to accepting (or otherwise prove themselves capable of accepting) a management role on the farm. The participants just had a lot of their lives and wealth in their land, and with it, a lot of questions about the future.

Many questions we get in workshops focus on specific tax and legal issues of estate planning, others about farm production and conservation income options, still others about the roles of and who to trust as a professional adviser. Most often, these are all bundled together, with different emphasis depending on the generation asking the question. Every farm and landowning family faces unique circumstances when it comes to making decisions on the future of their farm assets. Even so, the basic questions were often the same. For example, very often we are asked, "Which is the best form of business organization for my farm?" A tough question, one based entirely on goals and objectives of the family. Worksheets in this workbook lay the necessary groundwork to continue the investigation of business organizations as a planning tool. In this second edition, we have included an extensive narrative piece on legal forms of business organizations, along with a questionnaire to support necessary decisions.

This workbook is further supported by content on **www.ncftn.org**. The information on the website corresponds to the flow of this workbook, and individual worksheets can be downloaded. Each section is supported by links to many other resources from across the country. For more on the organization of this workbook, please see *How to Use This Workbook*, next page.



Please check out our calendar of events on the website for workshop opportunities to learn more about the process and get started on addressing tough issues. If you use the workbook or any of the materials, please let us know how it goes. And please, forward any comments, criticisms, suggestions for improvement. As noted above, like planning for your farm's future, the *Planning the Future of Your Farm* workbook is a continuing project.

Andrew Branan
abranan@gmail.com

How to Use this Workbook

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

The sections are meant to correspond with a basic process for getting started. The first section, **Developing Your Vision for the Future**, deals with what we call the "soft issues," those that are the most difficult to discuss in daily discourse or over long distances, and can often be ignored absent a forum for their discussion. The articles in this section are meant to offer some perspective on the process you are undertaking, stressing the nature of risk management and what your are accomplishing protecting your wealth and the relationships within your family. Several worksheets of note: 1) *Rating Life Values* is a set of questions meant to get you thinking, or at least affirm what you are already thinking, about the planning process and distribution of the farm to the next generation, in an excercise format where your family can lay their values on the table in a forum where everyone's feelings are respected; 2) *Rating Your Comfort Level* is another set of statements to gauge where you are currently in your thinking on the transfer process. This is a measure of your risk tolerance, which will of course govern decisions related to transferring farm assets. This worksheet will be most applicable to those looking to pass and take over a farm operation, and less relevant for off-farm heirs, but should be reviewed by off-farm heirs to familiarize them with the issues and risks faced by those in a farm business transfer; 3) *Setting Goals and Objectives*: another worksheet for the whole family, pretty self-explanatory, followed by a worksheet *Reconciling Priorities*, designed to help put different family members' goals in one place, and identify where some may conflict as they relate to transfer of the farm; 4) for Mom and Dad, *Sketching Your Retirement Lifesyle*, is a place to put down thoughts on how you would like to allocate your time later in life (with an eye toward what your disposable income needs will be, and whether farm assets will be needed for this purpose). A companion worksheet. Finally, 6) the *Risk Management Plan Sketch* worksheet is a place to jot down perceived risks to your vision (of keeping the farm in the family, transferring a business, etc.) based on the input of the various family members on previous worksheets, and what steps you believe you've taken to alleviate these risks.

Section two, **Evaluating Farm Resources**, starts with the worksheet *Estimating Income and Expenses* (considering all income from whatever source is a resource for families wishing to transfer farm assets). This worksheet is most important for mom and dad, but it will not hurt for each member of the family to work the exercise. Next, a primer on property ownership, one of your first steps in evaluation of your resources. How you own property ultimately determines what decision-making ability you have over the resource. The series of worksheets offer space and suggestions for you to rate the features of your farm, community, and family. Use the worksheets to identify features that need improvement to support your business model for the farm resources. The extensive *Farm Net Worth* worksheet is for current operations to determine their financial health for expansion and transfer, and realistic orientation on current liabilities on the assets.

The final sections, **Preparing to Meet with Professional Advisers** and an **Appendix of Frequently Asked Questions**, focuses more on mom and dad's efforts to make crucial decisions that will go into estate planning documents that will ultimately determine how farm assets are transferred. This section contains primers on various estate planning tools, but also other transfer management tools including business organizations and conservation easements. The worksheets are probably similar to those a professional adviser (financial planner or attorney) will have you complete as part of their service to you. These will let you start the process earlier, and will save you time and money. And it will show your advisers that you are on your toes about this planning process. The FAQ section has an article on an often overlooked topic that is nonetheless an important planning aspect of farm transfer: keeping the land in the present use valuation property tax program. *Planning the Future of Your Farm, 2ed.* closes with a **Glossary** of common legal terms, terms relating to land, etc.

Section One:
Developing Your Vision for the Future

A Suggested Definition

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

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

First, farm transfer planning is indeed a ***process***. As Dwight Isenhower once said, "The Plan is nothing, but Planning is everything." What he surely meant was: things will change, but our ability to gather and evauate information will enable us to make better decisions as things change. Farm transfer planning is the same idea. It is not a passive event, and there is no magic tool or silver bullet that will make it easy. It is the act of doing it that makes the difference. It is hard work, but will more likely produce the future you want for you, your family, and your farm.

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

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

This planning process supports your true legacy: ***preserving your family***. How well your children get along after you are gone, and how they remember the example you (Mom and Dad) set for them are a true legacy. Keeping land in a family where the family relationships are deteriorating defeats the purpose of keeping wealth in the family, and often this leads to loss of wealth. It certainly leads to stress on the farmer or manager of the land. Though we should not condone shifting blame for one's ability to manage their present relationships, I've seen plenty of children point to the decisions (or more often lack of) of their parents as creating a present tension between siblings over land. Legitimate? Maybe, but feelings nonetheless.

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

And just like that, you've come full circle, where your individual farm plans will help create the community in which your family wants to live and farm.

Farm Transfer Planning: Where to Begin?

Editor's note: The narrative below is the main text of a work that has been broken into several parts for this workbook. It was originally published as a pamphlet titled *Estate Planning: Where to Begin*, by Theodore A. Feitshans, J.D., Extension Specialist, Department of Agricultural and Resource Economics, College of Agriculture and Life Sciences Mark Megalos, Ph.D., Extension Specialist, Department of Forestry, College of Natural Resources and Sreedevi Gummuluri, Ph.D. Candidate in Economics, N.C. State University. The narrative has been edited with permission for use in this workbook.

Introduction

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

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

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

All of the concerns raised above can be addressed with your plan. Each plan is unique to family needs and resources. Estate planning is for everyone, not just the elderly or rich. The topic of death is not pleasant. But if you avoid planning your estate, you have unconsciously made some important choices. Your family will have to live with them.

Couples with young children who fail to plan their estates have chosen to have a court decide who will raise their children. Parents in a family business who fail to plan their estates may impair the likelihood that their children will succeed in the business. The state law provides for the distribution of estates if you die without an estate plan in North Carolina. It is quite likely that the plan set out in state law is not what you want for your family, nor what they would likely choose. People neglect their estates because "they don't have time" or they think it's "too expensive." But there is no time better spent than planning to protect your family's future. Moderate expense invested in professional assistance is insignificant next to the expense your estate could incur in litigation, taxation and red tape. It's not all about money—family quarreling, confusion and hardship can and does occur when loved ones die without an estate plan. Many families fight and become estranged, even for generations, over the assets of poorly planned or unplanned estates.

What Is Estate Planning?

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

1. Begin the dialogue.
2. Develop your objectives.
3. Compile information.
4. Seek professional advice necessary to implement a plan.
5. Update documents as situations change.

People often complain that seeking professional advice costs too much. Expense can be minimized if you take the initiative on the first three steps in this process prior to the first meeting with your chosen professional(s). Time is valuable for attorneys, tax professionals, and other experts who are needed in successfully planning your estate. Take the initiative to conduct family discussions, set clear objectives, and compile the information that these professionals will need before you employ key professionals. This will save money. Most of the money spent on estate planning often represents charges for resolving these initial issues. These are things you can handle before your first meeting with a professional. If your family finds that its members cannot agree on key issues, you may wish to hire a mediator or other professional counselor.

Begin the dialogue

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

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

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

Revisit Your Old Plan

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

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

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

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

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

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

UNDERSTANDING FARM FAMILY CONFLICT

***Editor's note*:** In farm transfer, at least some conflicting views are inevitable, and in many cases, the time taken resolving them will develop a stronger plan for the farm. The narrative below was written by Larry Hoover, Esq. professor at Washington & Lee University Law School and known as the "Father of Mediation" in Virginia. He is a faculty participant of our workshops in that state.

Introduction
A recent article in the Shenandoah (Virginia) Journal, "Farm Transitions: preparing to pass it on," acknowledges both the importance and the difficulties involved in preserving the family farm. Making the right decision about the farm's preservation is often a long and tedious process, involving all family members, even those not directly earning their livelihood from the farm.

As Bill Whittle, extension agent in the Page County Office of the Virginia Cooperative Extension Service put it, "Some clients don't want to talk about the process of death and dying," so they often delay the preparations about control and authority "until a crisis occurs, usually death, and then it is too late."

So let's look at some of the basics of farm family conflict. It typically has three dimensions, substantive, relational and process.

Substantive – These are the nuts and bolts – ownership, management, organizational structure, timing, tax issues, management, stewardship, etc;

Relational - Peoples' feelings, emotions and different perceptions about themselves and other family members, which make it difficult to make progress on the substantive issues;

Process – How decisions are made and how people feel about the decision-making process and whether it is perceived as fair by all involved. This is often the most neglected of the three dimensions.

The dynamics of conflict are often predictable. What starts as a disagreement is transformed into personal antagonism. Differences become inferences about the other's character, intentions or motives. Communications are less frequent, direct and accurate with those with whom we differ and more frequent with those who agree with us. So the conflict escalates in intensity, personal antagonism, mistrust and miscommunication.

What to do? Let's go back to the dimensions of family conflict. We can't make much progress on substantive issues; the relationships have deteriorated. So maybe we need to focus on process.

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

The classic example is the two sisters arguing over an orange, one claiming it because she was the oldest, the other because she found it. They were unsuccessful using the adversarial model, so they decided the split the orange down the middle. This might have seemed like a good solution until you watched one sister peel her half and eat the insides and throw away the peeling, the other sister throw the insides away and use the peeling for orange bread.

How can we change the game? Perhaps we could start by using the familiar admonition "Seek first to understand, then to be understood." It is not easy to listen just to understand what's important to the other, but is may be the key to getting the other to be willing to listen and understand what's really important to us.

And we don't have to do this alone. Interest-based negotiation, mediation and collaborative practice are processes well suited for dealing with family farm issues. An interest-based, collaborative process may not only resolve conflicts over the family farm but may also help heal longstanding relational issues within the family.

Worksheet

Planning the Family meeting

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

Target meeting date: ____________________ Place: ____

Time start: ____________________________

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

Proposed agenda:

____

____

____

____

____

____

____

Suggested preparation tasks	Person(s) responsible	Target completion date
1. Rate lifestyle values pg.	(e.g. All)	
2. Set goals and objectives pg.		
3. Locate important documents pg.		
4.		
5.		
6.		
7.		

Starting with What You Want

Those who work with farm families in the farm transfer planning process must balance their own experience, a collection of commonalities seen in other families, with the need to not draw pre-conslusions about the present family with whom they are working. Objectively discerning the basic *values* of the family members is an effort to achive this balance.

To start at the emotional basics of what will ultimately drive farm transfer decisions, we often start workshops with a basic question to the participants: “What do you *want* to see happen to your farm?” We ask this before considering the question through any lense of critical analysis of goals, resource evaluation, and the laws that govern wealth transfer. This question, like the farm transfer process itself, touches on a lot of seemingly different things that may be important to someone: all the way from keeping family harmony, or passing on a farming tradition, to “not paying taxes to the government.” Sometimes you will find that your family’s collective wants for the future of the farm, while not necessarily conflicting with each other, will nonetheless require modification and compromize.

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

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

The goal we espouse is fairness over equality. Equal will normally mean an equal distribution of dollar value. Fairness, on the otherhand, will mean taking in a totality of the circumstances in making distribution decisions. Considering the choices that heirs have made in their adult lives, what assistance they’ve been given in the past (gifts of farm assets, gifts of education or money to start a married life), and their own family’s needs (bad luck, or simply a case of special physical or mental need), all play into the fairness equation. The sooner the family can gain common understanding of each other’s views of fair, the stronger the process will be.

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

The underlying theme of this workbook is that there are no easy answers. Fortunately, there are legal tools available - such as business entities and other agreements - where access to income can be assured, along with a stake in the value of the land. Fairness will lie in how decisions balance the abilities of all heirs to access that wealth in the future. Fairness is also built into your family’s understanding the distribution decisions in your farm transfer plan. Ultimately, whatever the various motivations, all heirs must recognize that these decisions have been tackled by generations before them, and now ultimately it is the title holders - Mom and/or Dad - who must decide.

Worksheet

Rating Family Values

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

1	I want the farm to remain in our family's possession. *Why is this important/not imporant to you?*	1	2	3
2	I want the farm to continue to be farmed after I/we retire. *By who?*	1	2	3
3	I would like to remain physically involved in the farm after I/we retire. *Why is this important/not important to you?*	1	2	3
4	I want our children to have the opportunity to continue management of the family farm. *In what capacity?*	1	2	3
5	I would like the division of farm property to be equal in dollar value among our children.	1	2	3
6	I want the division of property among our children to be fair (not necessarily equal).	1	2	3
7	I want to give financial help to our children who choose a farm career.	1	2	3
8	I want to have the financial resources to do new things after farming. *What do you want to do? (see Sketch Your Retirement Lifestyle, pg. 14)*	1	2	3
9	It is important that our children agree with our plans for the farm's future. *Why is this important/not important?*	1	2	3
10	I would like to maintain some measure of financial control over the farm while I am alive. *Reason:*	1	2	3
11	I would like to be involved in the decision-making of the farm throughout my life. *Reason:*	1	2	3
12	I want to receive what the farm is worth when it is transferred. *What is your farm worth to you? (eg. full market value?)*	1	2	3
13	I want our children to play a part in the decision-making for the farm's future. *Why is this important/not important?*	1	2	3
14	I would like everyone in the family to be satisfied with the plan for the future of the farm.	1	2	3
15	It is important to me that our children's requests regarding the farm transfer be honored.	1	2	3

Worksheet

Rating Your comfort level

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

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

Worksheet

Sketching Your Retirement Lifestyle Plan

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

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

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

WHEN FAMILY BUSINESS TRANSITION MAKES NO SENSE

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

Introduction

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

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

Specific Responsibility and Accountability

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

Lack of Outside Experience

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

Size and Efficiency Counts

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

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

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

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

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

21st Century Business
Is the business and location you are returning to an opportunity to establish productive roots for an extended period of time? Does it have the soil, water, and markets that make it viable? Are you near a locale that has the infrastructure, schools, hospitals, and shopping areas that make it appealing to the early 21st Century family? The old rule is that young people like to be located within a 45-minute drive of the mall.

A newer rule may depend more on availability of high speed internet in the area where you want to live and farm.

SURVEYING FARMERS ON SUCCESSION PLANNING

In the winter of 2005, NCFTN, with funding from the North Carolina Tobacco Trust Fund, commissioned the Ag Statistics Division of the North Carolina Department of Agriculture and Consumer Services to conduct a survey of farm operators across North Carolina on various issues relating to their planning for the future of their farm operations. The survey instrument, part of the international FARMTRANSFERS research project, asked questions specific to family discussion, use of estate planning tools, and management transfer to a successor. The results provide key insight into attitudes toward planning. The survey went to a random sample of 3,042 farmers and resulted in 2,099 responses, a response rate of 69%. Findings include:

When will you stop farming?
About 50% of farmers surveyed indicated they never plan to retire. Another 35% plan to semi-retire, still operating the farm while receiving retirement benefits like social security or pensions. Of the 18% of farmers who plan to retire, they expect to do so at age 65.

Retirement planning
Around 67% of respondents have not discussed their retirement plans with anyone. Twenty-five percent said they have discussed their plans with family members; 7% have consulted a professional advisor.

Estate Planning
Almost 43% of respondents do not have an estate plan in place, and 42% do not possess a will. Life insurance was the most commonly reported estate planning tool, with 70% of farmers claiming ownership of life insurance.

Identifying Successors
Almost 75% of North Carolina farmers have not identified someone to manage their farm after they retire. Of the 25% who have named a successor, most often, this successor was usually a son or daughter--average age of 33 years-- 50% of whom currently work off the farm.

Passing Down the Farm
When asked about their plan for passing the farm through the estate to multiple heirs, 33% said they would divide the assets equally; 22% said they would keep it in the family or as one unit; 4% planned to sell; 10% had other plans or were undecided. Thirty-one (31%) percent said "No Comment."

Developing Goals and meeting Objectives

***Editor's note*:** A key challenge faced by farmers and landowners is clearly articulating their goals and objectives to their professional advisers. Busy practitioners are challenged to spend the time with clients helping them - and their families - explore their goals and objectives, and identifying often hidden and potentially conflicting goals. The more work that can be done to articulate goals and objectives before meeting with advisers, the better they will be able to help you. Indeed, the many decisions of farm tranfer are built on a clear understanding of a shared vision. This can only be achieved by the exercise of writing down goals and objectives. Generally, you should think of goals as long term (5 to 10 years) and objectives as those shorter-term achievements that take you to your goals. The worksheets following should provide a platform to get you and your family started. The following list is excerpted from excerpted from *Estate Planning: Where to Begin*.

Introduction

Your goals and objectives for your estate are unique. Likewise the objectives of your family members may be different from yours. You, the testator (the maker of the will), will ultimately create the will and make the estate decisions. Nevertheless, discussion of your objectives and the desires of family members and business associates can reduce the likelihood of strife following your death.

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

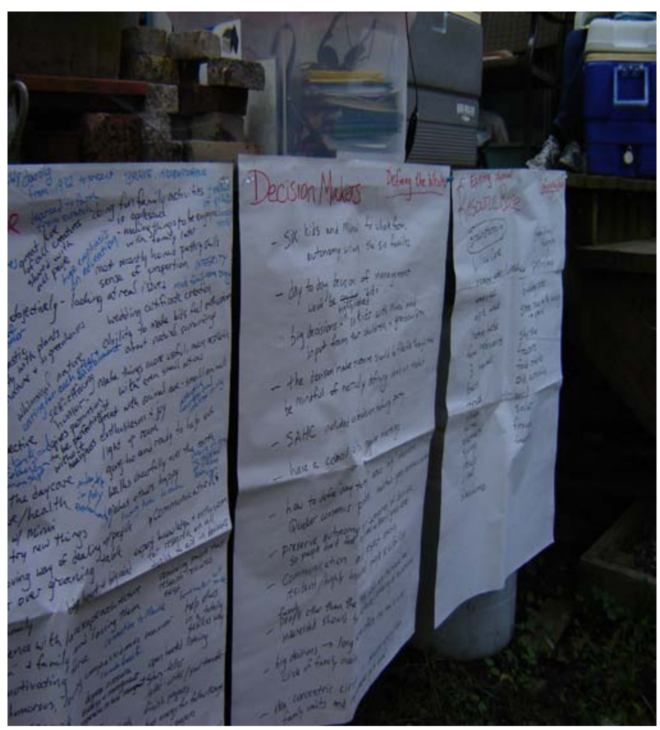
After you have a feel for your family's objectives, sit down and list your individual objectives. Rank your objectives in order of importance. Consider the bullet list below as a guide. Once your objectives are clear, your estate plan can be tailored to meet your particular needs.

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

- Provide security for your surviving spouse.
- Relieve your surviving spouse of management responsibilities.
- Provide management flexibility for your surviving spouse.
- Provide security for both spouses after retirement.
- Retire at a specified age (for example, 50, 60, or 70).
- Provide financial and physical security for an incapacitated heir.
- Assure continuity of a farm, ranch, or other businesses.
- Keep a business in the family.
- Review the current operation and ownership of the farm, ranch or other business, and restructure as needed to promote sound business management.
- Protect business associates and the business from adverse consequences of your death.
- Pay for the education of heirs.
- Assist heirs, including in-laws, to get started in business.
- Minimize estate and probate taxes on the estate of

spouse who dies first.

- Minimize estate and probate taxes on the estates of both spouses.
- Minimize other taxes, including income, property, and gift taxes that may adversely affect you, your business or your heirs.
- Minimize expenses associated with settling an estate.
- Minimize the probate estate (assets that pass through probate).
- Nominate guardians or designate trustees for minor children, or both.
- Nominate a guardian or draw up a durable power of attorney and nominate an agent in the event of your own disability.
- Plan for the financial consequences of your incapacity or disability.
- Nominate executor(s) of your estate.
- Provide for the payment of the estate's taxes, debts, and expenses.
- Provide equitable (although not necessarily equal) treatment of children.
- Transfer specific property to specific heirs or others.
- Transfer nontitled personal property of significant emotional value but little monetary value in a cost-effective manner that satisfies heirs.
- Make gifts to heirs and others during your lifetime.
- Reduce income taxes through disposal of income producing property during your lifetime.
- Transfer property during your lifetime by means of an installment sale.
- Donate a scholarship to a favorite university.
- Provide for charitable bequests to your favorite charities or other organizations.
- Avoid the adverse consequences, such as a sense of entitlement and a lack of initiative, that the children of wealthy parents sometimes have.
- Avoid the transfer of property to undeserving children or other heirs.
- Use trusts to prevent financially irresponsible children from dissipating their inheritance.
- Provide for coordination between federal and state taxes to minimize the overall tax burden.
- Provide for privacy of the family finances and the family business.
- Make advance decisions about end-of-life issues including whether to terminate life support, whether to use alternatives such as hospice care, and whether to use certain medical technologies.
- Nominate a health care agent to make health care decisions in the event of your incapacity.
- Make advance decisions about mental health treatment.



Worksheet

Setting Goals and Objectives

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

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

Worksheet

Reconciling Priorities

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

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

List the SHARED goals and note whom they are shared by

List the potential CONFLICTING goals identified above

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

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

Risk Management

Evaluating risks associated with the continuation of the farm business is the first step in developing a plan to address and/or reduce these risks. The worksheet *Quick Risk Assessment* (see page XXX) is a way to indentify the risks that your proposed business arrangement will face.

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

Planning the 5 D's

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

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

How a family deals with these issues will likely affect the farm transfer process. For example, the operation may be able to continue if the spouse that does not provide labor to the farm business dies, but what if the person providing the major labor and/or management dies or is disabled or incapacitated for a long period of time? How long of a period of disability can the operation survive? Should there be life insurance? Should there be disability or income continuation insurance to cover the major contributors? How can we protect the transfer assets from being sold off or divided in the event of a divorce? How much crop insurance, liability insurance, casualty coverage should there be? How will a major illness or injury affect the operation? Do we have enough health insurance to avoid an impact on the business finances in the event of a major illness or injury? What happens if a major

disagreement results in one or more of the farm operators leaving the farm business and withdrawing farm assets?

Death

Life insurance can provide protection for families and/or the business in the event of death of one of its members. For young families who generally have higher debt and less cash to work with, term life insurance may offer an attractive and low cost alternative to whole life or other investment protection. Term policies do not have a value except upon the death of the insured.

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

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

Disability

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

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

We have all seen situations that are “accidents waiting to happen.” Being alert to your surroundings will help you and your family continually identify potential hazards and take action to mitigate harmful situations. This “insurance” is one of the best protections you can have for your farming operation.

Disaster

When we hear the word “disaster,” we generally think of natural disasters like a tornado, drought, or flood. A broader definition could include any major event or circumstance which has a severe impact on the farming operation. These might include stray voltage, contaminated feed or water supply, a manure or

pesticide spill, or a tort liability claim or judgement (think agritourism accident) or the call-in of a debt that cannot immediately be paid. All of which can put the operation in financial jeopardy.

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

Divorce

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

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

Disagreements (Conflict Resolution)

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

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

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

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

A plan needs to be developed at the time of commencing the business arrangement as to how multiple farm business families will sever their joint farming operation. Generally a plan is needed where departed members receive only part of their investment at the time of severing the joint farming operations. Some number of years for the payments should be established when the agreement was originally formed. When developing a business arrangement it is important to consider how to take it apart if it is not working. If it is organized in a way that makes it difficult to take apart it may be best to consider alternative arrangements.

Worksheet

Quick Risk Assessment: the 5 D's

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

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

Section Two:
Evaluating Your Farm Resources

Notes

How Do You Own Your Property?

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

Classes of Property

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

Making an Inventory

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

Who holds title to the property?

Holding title means you have rights of ownership. Ownership or title is shown on the deed, certificate, bill of sale, contract, will or other document. For real property, the document of title must be registered with the Register of Deeds in the county where the property is located. Ownership of personal property may be shown by automobile titles, receipts, contracts, bills of sale, bank records, stock certificates, etc. Without these documents, ownership of personal property may be

difficult to prove. In some cases, possession of personal property is proof of ownership.

You may hold title to property by yourself or with other people. If your name is the only name on the document of title, you are the sole owner of the property. If your name and someone else's name appear on the document of title, your ownership rights may be limited by the rights of the other owner. The document of title determines the ownership rights of each owner.

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

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

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

Usually, the life tenant has the following rights and duties, unless the document creating the life estate shows a contrary intent.

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

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

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

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

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

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

• The land itself may not be sold unless the life tenant and all the remaindermen join in the sale. If the property is unproductive, the life tenant may get permission from the court to sell the land. However, he must reinvest the funds for the benefit of the life tenant and the remaindermen.

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

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

Although it is easy to create a life estate, it has serious legal consequences. Carefully consider the burdens and restrictions you may be placing on the life tenant. Check the tax consequences of conveying a life estate, particularly if you plan to convey a life estate to your spouse. Consult an attorney and a tax advisor for additional details.

Concurrent interests: You and others may own concurrent interests in the same property. Concurrent joint ownership means your rights and the rights of other owners occur at the same time. Your rights in the property depend upon the form of joint ownership. Concurrent joint ownership of property in North Carolina may take three forms: tenancy in common, tenancy by the entirety and joint tenancy without a right of survivorship, or with a right of survivorship. Of the three forms, only tenancy in common permits your interest in the property to pass under the terms of your will.

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

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

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

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

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

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

Example: Jane owns a 25 percent undivided interest in property with a fair market value of $100,000, the value of her interest for estate tax purposes may be $25,000. However, Jane’s estate may make a strong argument that the value of her interest is less than

$25,000. A fractional interest in property is less marketable and less desirable than an entire interest.

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

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

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

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

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

spouse contributed toward acquiring the property. Ask your attorney or tax advisor for details.

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

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

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

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

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

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

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

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

There are special, survivorship accounts available in North Carolina for which a beneficiary may be designated. These accounts offer several advantages. Check with your bank for details.

Conclusion

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

Worksheet

ESTIMATING INCOME AND EXPENSES

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

Part I: Income	Current	Expected
Wages (Annual)		
Social Security		
Pension/IRA/401K		
Social Security		
Farm Income		
Other Business Income		
Rent/Lease Income		
Conservation Program Income		
Taxable Interest		
Tax-Exempt Interest		
Stock Dividends		
Annuity Payments		
Other (e.g. alimony)		
Total Gross Income		
Estimated Taxes		
Federal		
State		
Medicare/Social Security		
Total Taxes		
TOTAL NET INCOME		
Part II: Expenses	**Current**	**Expected**
A. Housing		
Gas/Oil/LP		
Electric		
Real Estate Taxes		
Mortgage Payments (P+I)		
Home Equity Line		
Home-Owners Insurance		
Rent		

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

Evaluating Your Farm and Community Resources

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

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

The Quantity and Quality of Land

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

Working infrastructure and capital position

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

Personal Management Capacity

Management capacity is not a given, and will probably be one of the most senssitive discussions the family will undergo. Mom and Dad are making decisions based on love, but even those should take into account whether potential heirs or business successors have the personal wherewithal to manage land and/or a business responsibly (particularly if sharing ownership with siblings). Where families are looking to gradually transfer a business between gerenations, and assessment should be made of both generations' abilities, to look for complimenting skills and productively identify areas of improvement. Where a family will keep but not actively farm the land, someone still will need to manage tenancies and payment of taxes. Management capacity should be assessed of family members for this purpose.

The Quantity and Quality of Labor and Tenants

If someone in your family plans to operate an enterprise on the land, what will be the labor supply? Any enterprise will necessarily depend on family labor, or hired outside labor. Questions to consider include how much time will family members be able to devote to the enterprise, particularly if working an

off farm job, and is there an offordable labor pool in the area, one that the enterprise model can support. If you are looking at working with another producer - as a tenant or a potential partner - what is the availability of those individuals in your area. In many farming areas, the competition for land is competitive and fairly straightforward, built on relationships and who will pay the highest rent supported by commodity prices. In other areas, finding a suitable producer tenant can be more of a challenge, depending on their business model and experience, and the factors they require in building an enterprise on your land. At some point, you will need to develop your criteria for who you will want farming your land, based on your financial needs and personal values.

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

As noted above, if your family wishes to keep land under family ownership but not actively farm it, you will need someone else to farm it. Does your land lie in an area where there is an active tenant market? Is there enough local support to help a tenant grow a business on your land? In North Carolina, many counties are demonstrating their support for agriculture through systematic assessment and development of farming capacity by developing county-wide farmland protection plans (see sidebar).

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

North Carolina Counties Draft Farmland Protection Plans

A number of North Carolina counties are developing Countywide Farmland Protection Plans, a new tool to help build local markets, build public support for agriculture, create farm friendly local policies, and develop needed agricultural infrastructure.

In 1986, the North Carolina General Assembly passed the North Carolina Farmland Preservation Enabling Act. The stated purpose of this Act was "to authorize counties to undertake a series of programs to encourage the preservation of farmland as defined herein." In addition to enabling counties to create Voluntary Agricultural District ordinances - adopted by 69 counties as of this printing - the Act also created the North Carolina Farmland Preservation Fund and enabled counties to develop purchase of agricultural conservation easements (PACE) programs. By later amendment, the General Assembly created a matching mechanism for distribution of Farmland Preservation Trust Fund monies, with preference to counties adopting a **countywide farmland protection plan**. In 2005, the General Assembly amended the Act to enhance the Trust Fund to include agricultural development projects, and funded the program with $8,000,000. Part of this money was used to help counties develop these farmland protection plans.

These plans seek to identify challenges facing agriculture in these counties, but also identify and assess local infrastructure presently available to a thriving farming community, as well as the opportunities for further infrastrcture development. The plans also identify tools available to farmers and landowenrs to protect land from development encroachmenet. Farmland Protection Plans see to publicly establish the county's vision for an agricultural future, and guide county decisions such as planning and zoning to support the county's agriculture industry and farming community.

To date, Countywide Farmland Protection Plans have been approved in Buncombe, Polk, Alamance, Haywood, and Cabarrus Counties, with more currently in production. The Polk County plan took the step of advocating for an Agricultural Economic Development Coordinator position to work on agricultural marketing issues and help farm enterprises in the county connect with a wider customer base.

Worksheet

Evaluating Farm Resources

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

Part I: Natural Resources

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

Notes:

Part II: On-Farm Buildings and Infrastructure

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

Notes:

Part III: Local and Community Infrastructure

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

Resource	Poor	Adequate	Strong
Availability of farm supplies			
Repair services			
Availability of financing			
Availability of business support (training, tax professionals, etc.)			
Competitive tenant market			
Availability of processing			
Competitive labor market			
Road system			
Local zoning policies			
County and Municpal government support of agriculture			
Community support of agriculture			
Local Farmers Market			
Urban pressure			
County economic development			
Voluntary Agriculture District			
Availability of health services			
Other:			

Notes:

Part IV: Farm Asset Net Worth Statement

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

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

Part IV: Supporting Schedules

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

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

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

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

Part IV: Supporting Schedules (cont'd)

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

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

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

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

Part IV: Supporting Schedules (cont'd)

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

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

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

Part IV: Supporting Schedules (cont'd)

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

Schedule N: Farm Accounts Payable	
Description	Value
Total	

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

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

Part V: Management (Human Resource) Assessment

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

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

Notes:

Evaluating Your Forest Stand

Your forest stand is a valuable but often overlooked asset that should be properly assessed and managed. Almost all of the farms in North Carolina have a forested component. These forests have many uses; providing a raw material supply for the forest products industry, assisting in the production of oxygen, providing valuable wildlife habitat, offering recreational opportunities, as well as supplying many jobs for your community.

First, a little perspective on this natural resource:

- Forests dominant the landscape of N.C., covering about 17.6 million acres. Approximately 89% of this forestland is privately owned, by some 660,000 landowners.
- These forests are dominated by hardwoods, about 55%, mixed stands about 17% with pine plantations containing about 28%.
- Harvests of forestland are approximated at 247,400 acres per year, while reforestation, the establishment of new forest stands, is approximately 315,000 acres per year.

The first step in evaluating your forest stand is to seek out a forester for assistance. There are many resources available for landowners to receive advice. The N.C. Division of Forest Resources, and the N.C. Cooperative Extension Service are both very good State agencies, which offer sound information and help to landowners. Consulting foresters are also available to assist landowners in the management of their forest resource.
A forest assessment should include a property inspection, which includes many factors. Age, species, size, volume and harvest history of the timber will be considered. Property lines, logging conditions, access, wildlife, recreation and improvements, are just some of the additional items that will be addressed.

Once the initial assessment has been completed, the forester will recommend to you a course of action to improve and enhance your forest resource in conjunction with your objectives. Your timber stand may need thinning, a select or clear-cut type harvest, or the stand may not require harvesting at all. A consulting forester can assist you in these planning and implementation of these activities.

A consulting forester is a natural resource professional qualified to practice forestry for the benefit of society. In North Carolina, General Statute 89-B defines a consulting forester. The distinction is important to protect you from the advice of unqualified individuals who have not met the educational and ethical standards of professional consulting foresters. The Association of Consulting Foresters (ACF) was organized in 1948, to promote the ethical and professional standards of consulting forestry.

ACF Consulting Forester can provide the following services:

- Develop a forest management plan. A sound plan will improve your forest's health and productivity, and may reduce your property taxes.
- Determine the volume and value of your timber. Accurate timber inventories and appraisals are important for investment analysis, assessments, and for estate planning and cost basis establishment purposes.
- Conduct timber harvests and sales. University studies show that landowners who receive professional forestry assistance prior to selling timber have higher net revenues and better protect the environment.
- Properly reforest your land. An ACF forester can advise and assist you on how to best establish a new stand of trees.
- Reduce your risk. An ACF forester can help you reduce the risk of loss from fire, insects, diseases, overstocked stands, and improve tax treatment of income.
- Enhance wildlife habitat. Good habitat can increase hunting lease revenue,
- Improve hunting success, or increase wildlife viewing opportunities.

Your forest resource is valuable, and may be managed profitably, and to achieve a multitude of objectives. When you consider you farm and its potential, don't forget the forest, and the trees!

About the Author: E. Gerald Tugwell is a registered forester out of Asheboro, NC, may be contacted at www.hendersontugwell.com.

SECTION THREE:

PREPARING TO MEET WITH PROFESSIONAL ADVISERS

Notes

About Your Team of Professional Advisers

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

Members of your team are will include attorney(s), a financial planner, accountant, and could also require the services of appraisers, insurance agent, cooperative extension agents, and agents of financial institutions, including present and future creditors. The realities of putting together a competent "team" of professionals - one that effectively compliments each other's expertise and applies that expertise in a coordinated fashion to your particular circumstances – can be daunting. Indeed, it can often be simply an illusory ideal based on geography and finances, but in striving for it you will be better served by your professional advisers.

A primary challenge is determining who will coordinate the communication between professionals in a manner that you remain in the loop. Many times, this will be a member of the family that has volunteered for the task of coordinating the many assessments and information gathering as outlined in this workbook. This person will spend many hours reading up on subjects related to farm transfer planning, estate planning, arcane tax issues, as well as many hours on the phone with advisers, gathering information from family members, coordinating family meetings. There are other professionals that can serve in this purpose as well, either as a consultant, or as one of the members of your "team."

Most farmers and rural landowners live in rural communities of North Carolina where interlocking relationships surrounding access to financing and other products for their businesses and homes influence their choices of professional assistance. In this local referral pattern, one professional you customarily work with, perhaps a lender or insurance agent, refers you to other professionals and so on. In many cases, professionals will refer you to someone they have worked with before on other matters, and already have established mutual trust and lines of communication. Indeed, it makes little sense for one professional to refer you to someone in which they have little confidence, as that will reflect directly on their professional credibility.

Sometimes, professionals will refer you to a person or persons who he or she knows will refer them business in return. One can argue that there is a danger that professional to whom you have been referred may feel "bound" to follow the advice of their referring colleague, knowing that no doing so may endanger further referrals. It happens.

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

For a number of reasons, it is often practical to have the attorney serve as the central team member, often the point of first contact. One very practical reason: Attorneys ethically must accept responsibility for making sure clients fully understand what rights and opportunities they are giving up by choosing a particular course of action at the recommendation of a non-lawyer professional member of their team. Attorneys should take care to offer clients clear and understandable information on the consequences of each decision, in writing, and should request that clients give them clear direction, in writing, on what their course of action will be.

Selecting a good attorney can of course be a challenge. The attorney most farmers and landowners come in contact with will be someone local in their community with whom they have done business before or has served other members of the family. When asked for a referral to an attorney, I often hear: "We really need someone who understands farming." I believe a more accurate requirement would read: "We really need someone who will listen to us, and understand why we want to keep the farm." The issues surrounding farm transfer fall into a number of areas of legal practice – estate and gift tax planning, elder law, farm business operation (itself a host of practice areas) - and you should not expect all of these in one practitioner. Remember that the basic legal issues involved in farm transfer are not specific to you as a landowner or farmer, but generally apply to all members of society. What differs is the landed nature of your wealth, your rural values that may govern your decisions, your role as a small business owner or caretaker of a land legacy.

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

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

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

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

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

Gathering Information About Your Estate

Editor's note: The following piece goes in depth into how to save time and money by gathing your important information prior to meeting with professional advisers. Theodore Feitshans is the author.

Introduction

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

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

Personal Information

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

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

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

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

Bank Accounts

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

Stocks and Bonds

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

Life Insurance

List the company(ies), contact information for each company, the policy number(s), the type of life insurance (such as term, universal life, whole life), the face amount, the cash value (if any), and the exact name(s) of owner(s), the insured(s), and the beneficiary(ies) of each policy.

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

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

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

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

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

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

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

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

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

Worksheet

Locate Important Documents

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

DOCUMENT	WHERE IS IT?
Birth Certificates (all family members)	____________________
Marriage Certificates	____________________
Divorce decrees/separation	____________________
Social Security cards	____________________
Medical Records	____________________
Living Will	____________________
Healthcare Power of Attorney	____________________
Durable Power of Attorney	____________________
Bequest list of tangible personal property	____________________
Wills and Trust documents	____________________
Cemetery deeds/burial instructions	____________________
List of special bequests (to heirs, charity, etc.)	____________________
Insurance policies	____________________
Stocks/bonds certificates	____________________
Real estate deeds	____________________
Promissory notes, contracts, mortgages, receivables	____________________
Partnership/corporation agreements	____________________
Checking/savings account statements	____________________
Pension statements	____________________
Income/gift tax returns	____________________

Worksheet

GATHERING INFORMATION ABOUT YOUR ESTATE

Use this worksheet to take stock of your personal wealth, your family situation, and your current plans and ideas, so that your professional advisors will have a good starting point from which to guide you through the farm transfer planning process. Your attorney or financial planner may have a form similar to this one for you to complete as an alternative.

I. PERSONAL INFORMATION Date: ____________

Your Full Name: ____________

Birth Date: ____________

Spouse's Full Name: ____________

Birth Date: ____________

Date, County, and State of your marriage: ____________

Home address: ____________

Home telephone: ____________ Email address: ____________

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

Husband: ____________

Wife: ____________

Business telephone: Husband ____________ Wife ____________

II. PROFESSIONAL ADVISERS:

Attorney: ____________

Address: ____________

Telephone: ____________ Email address: ____________

Insurance Agent: ____________

Address: ____________

Telephone: ____________ Email address: ____________

Financial Advisor: ____________________

Address: ____________________

Telephone: ____________________ Email address: ____________________

Accountant: ____________________

Address: ____________________

Telephone: ____________________ Email address: ____________________

Lender: ____________________

Address: ____________________

Telephone: ____________________ Email address: ____________________

Other Advisors: ____________________

____

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

Name	Spouse	Date of Birth	Resides (City, State)

III.B. GRANDCHILDREN:

Name	Parent	Date of Birth	Resides (City, State)

IV. GENERAL FAMILY INFORMATION:

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

If yes, please explain:

Are there any persons dependent on you? Yes No

Monthly obligation: Alimony $ for years

V. CURRENT ESTATE PLANS:

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

Location of original(s):

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

Location of orginial(s):

Do you have a marital property agreement? Yes No

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

Location	Ownership*	Basis**	Estimated Value	Mortgage Balance

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

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

VII. BANK ACCOUNTS AND CERTIFICATES OF DEPOSIT:

Institution Name	Type of Account	Ownership	Approximate Balance

VIII. STOCKS AND MUTUAL FUNDS:

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

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

Description	Due Date	Face Value	Market Value	Ownership

X. LIFE INSURANCE

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

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

Primary Beneficiary			
Contngent Beneficiary			

XI. RETIREMENT PLANS

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

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

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

Contributor			
Investment			
Approximate Value			
Designated Beneficiary			

XII. INTEREST IN TRUSTS OR ESTATES:

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

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

If yes, please explain:

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

If yes, please explain:

XIII. PERSONAL EFFECTS:

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

Description	Ownership	Estimated Value

XIV. CLOSELY HELD BUSINESS INTERESTS:

[DESCRIPTION]

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

XV. LIABILITIES (other than real estate mortgage):

[DESCRIPTION]

Creditor	Amount Due	Date Payable	Collateral Description

XVII. GIFTING:

Have you or your spouse made any gifts in any one year to any person which exceeded in value either a) $12,000 if made by you alone, or b) $24,000 if made by you and your spouse? Yes No

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

Gift Description	Estimated Value	Date of Gift	Donee

Notes

Wills and Trust Notes

Basic Estate Planning Documents: Wills, Trusts, and Gifting

Editor's note: The following narrative edited from part of a series produced by John Baker, Esq. of the Iowa Beginning Farmer Center. Users of this workbook should note that all discussions about the tax implications of passing property through your estate or giving away property are based on current federal law that is set to expire at the end of 2010. It is not a stretch to say that Congress will likely act to write new estate and givt tax legislation.

Wills and Probate

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

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

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

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

Can I disinherit my family in my will?

If a surviving spouse is not happy with property given by will, the spouse can elect to take against the will and take the statutory amount instead. North Carolina law provides that the surviving spouse can elect to receive one half of the decedent's total net assets if there are no surviving lineal descendants of the decedant. In the instance where there are two or more surviving children or one surviving child and the descendants of a deceased other, the spouse can elect for one-third total net assets. There is no statutory provision in North Carolina protecting disinherited children; therefore children will only receive property bequeathed by will.

What will happen to my estate after I die?

The probate process is the legal process for proving the validity of a will and distributing your assets according to that will. The person who is named in the will as executor will be in charge of the probate process with your lawyer. The process can be lengthy and costly and usually lasts several months. With the supervision of the county clerk of court, the executor must identify and inventory property of the deceased, have the property appraised, pay all debts and taxes and finally distribute remaining property as the will directs. If you die intestate (without a will), the same process will take place except the court will appoint an administrator of its choosing to carry out the probate process and remaining property will be distributed according to North Carolina law instead of as directed by a will. A summary of the North Carolina probate process can be found in a pamphlet found online at http://www.nccourts.org/Forms/Documents/735.pdf

Probate is a public process and the proceedings will be available in public records. The property may also be tied up in the process for several months and will not be readily available to the heirs. For these reasons, many people try to avoid extensive probate proceedings. Property held in living trusts, joint bank accounts or pay on death accounts, real estate held in joint tenancy, and some life insurance proceeds are not subject to probate.

Trusts

A trust is a legal entity that separates the management of property from the enjoyment of property. A settlor, the creator of a trust, transfers title of his or her assets into the name of the trust; this is called funding the trust. This property, which is held in trust, is called corpus, principal or the trust estate. A trust instrument is the set of documents creating and detailing the terms of the trust. The Instrument names a trustee to manage the trust property and sometimes a backup trustee. It also names the beneficiaries who will receive proceeds from the trust during the life of the trust and the beneficiaries who will receive the corpus when the trust is dissolved.

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

Living Trusts

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

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

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

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

Irrevocable Trusts

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

Transferring property into an irrevocable trust is essentially a gift to the beneficiaries and transfers will be subject to gift tax. Annual amounts of over $13,000 (during 2009) transferred into the trust will be subject to gift tax. An election can be made to transfer up to $1 million into the trust without paying gift tax; however, the transfer will reduce the unified credit and increase the amount of your estate that will be subject to estate tax. For very large estates, it may be valuable to make the election so that property appreciates in the trust instead of in the estate. Since the property must be forfeited by the settlor, the beneficiaries must have a present interest in the trust property.

Other types of trusts include testamentary or pour over trusts which are established by will. Spendthrift trusts protect assets which may be recklessly spent by beneficiaries, by limiting the rights of the beneficiary to receive income from the trust. A Qualified Terminable Interest Trust (QTIP) provides a surviving spouse income during his or her lifetime. Charitable remainder trusts allows the settlor to contribute their property to charity and receive the income from the property over their lifetime.

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

Gifting

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

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

Gifts must be given free of any restrictions and are not revocable. The donor (giver) must be ready to completely part with the property. For example, Dad gives Son five cows and the cows are moved to the Son's pasture. However, Dad still checks them every day, decides which bull to breed them to, and continues to make all managerial decisions regarding the five cows, it was not a gift but a loan or a lease and the cows will still be part of Dad's estate. Additionally, if Dad reserves the right to take the cows back, no gift was made.

Tax Implications of Gifting

In 2009, the annual exclusion amount is $13,000 and is indexed for inflation. This means that any one donor can make a gift of $13,000 to any one recipient without being subject to gift tax and without affecting the unified credit (amount of your estate excluded from estate tax) of the donor. Husbands and wives can combine their annual exclusion and give one recipient an annual tax-free gift of $26,000. For even larger gifts, husband and wife can give a child and their spouse each $26,000 for a total gift of $52,000 tax free. Any gifted amount in excess of $13,000 per donor/donee will result in significant tax rates (as much as 45%) or will affect the size of the donor's taxable estate at death. Gifts for payment of educational and medical expenses are tax exempt.

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

Worksheet

Wills and Trusts Basics

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

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

Name/Address: ______________________________

Successor(s): ______________________________

Trustee: If you are advised to make use of a trust, whether in your will or in a separate living or insurance trust, you will need to name a trustee to manage investments, pay taxes, make distributions, and so forth. In the event he or she dies, you will want to provide for one or more successor trustees. Many who establish a living trust will become the trustee with a trusted family member or institution taking over upon death or incapacity.

Name/Address: ______________________________

Successor(s): ______________________________

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

Guardians for minor children: For younger parents using this workbook, it is important to accept the possibility that you could, through accident or illness, predecease your children. You may suggest a guardian for your children in the body of your will. A thorough discussion of who might best serve as the guardian of your children in that event should take place before drafting or updating your wills. It is important to identify secondary and tertiary guardians in the event your first choices are unable through changed circumstances to serve or otherwise care for your children.

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

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

Name/Address: ______________________________

Successor(s): ______________________________

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

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

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

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

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

Final heirs: In the event your children predecease you before inheriting your estate, to whom would you want your estate to pass? For example, ½ to the husband's side of the family (e.g., parents, brothers, sisters, etc.) and ½ to the wife's side?

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

Who are they? ____

Percent of estate? Outright gift? Restrictions? (Make notes on the reverse of this page)

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

Item To Whom:

Name	Item	Reason

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

Appendix:

Frequently Asked Questions

Business Entities, Conservation Easements and Property Tax Valuation of Farmland

Notes

Entity Choice for Agricultural, Forestry, or Horticultural Ventures

Editor's note: One of the most commnon questions we encounter is about business entities, and their effectiveness in limiting operating liability (ie. protecting assets from lawsuits and creditors). Placing land and operting assets into business entities is also an effective tool in transferring income, management and ownership/control of those assets to ensure they remain producing or under ownership of the family. The following narrative is an overview of the different business entity choices in North Carolina, written by Theodore Feitshans and Guido van der Hoeven for the *Rural Lands Update* professional credit series, 2008.

Introduction

North Carolina land owners engaged in agriculture, forestry, and horticulture have a wide variety of entities available to them. This wide variety of entities reflects the diversity of interests of North Carolinians involved in agriculture, forestry, and horticulture. Choosing an entity is an important task that requires research reflection and, typically, expert assistance. Concerns about choice of entity are often prompted by concerns about tax or tort liability. While these issues are important they are generally not the most important issue driving the choice of entity. Issues such as management of the business, whether the activity is even a business (i.e., motivated by a profit motive), business continuity, and the need to attract outside capital often override tax and liability issues. Decisions made solely upon the consideration of tax and tort liability fears often result in a business structure unsuitable to the activity. The failure to make a decision about business structure is indeed a choice. Some of the entities discussed below are created by the operation of law.
Entity types

Sole proprietorship

The sole proprietorship is the simplest type of entity. Nothing is needed to create one although there may be a need in some cities and counties to apply for a business license (generally not true for agricultural, forestry, and horticultural operations). The owner of a sole proprietorship has the widest latitude to operate the business possible. Indeed a sole proprietor may do anything that is not prohibited by law.

Partnership

General partnership

A partnership is an association of two or more persons to conduct a business for profit. The relationship is consensual and usually contractual. A partnership is treated as an entity for litigation, holding title to property, and bankruptcy proceedings. North Carolina has adopted the Uniform Partnership Act (UPA). N.C.G.S. Chapter 59, Article 2. Under the UPA, the partners must have equal management authority and share equally in profits and losses. They have an equal obligation to contribute their time, energy and skill without compensation to the partnership business. Each partner has unlimited personal liability to the creditors of the partnership, and all partners are liable for wrongful acts and breaches of trust by any partner.

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

A general partnership agreement may be oral. If there is never any attempt to make an agreement but two or more people begin conducting business together then a partnership agreement is created by operation of law. Its terms are the default terms in the UPA. Courts (particularly bankruptcy courts) have imposed a partnership relationship upon parties who did not think that they were partners. Examples of relationships that may, in actuality, be partnerships include employer/ employee relationships, particularly where the employee has received a share of the crop and has shared in the risk of production; and landlord/ tenant relationships, particularly those involving share-lease arrangements. Likewise some poorly constructed partnerships may be recharacterized by the Internal Revenue Service (IRS) employer/employee relationships. In such a situation the relationship could remain a partnership for state law purposes but not for purposes of federal tax law. Farmers are particularly prone to these types of costly mistakes because they often proceed without professional advice. Correcting such a problem is much more difficult than avoiding it in the first place.

Limited partnership

A limited partnership has the characteristics of both a partnership and a corporation. It is used when some partners want neither management responsibility nor unlimited liability for the business venture. North Carolina has adopted the Revised Uniform Limited Partnership Act (RUPLA). N.C.G.S. Chapter 59, Article 5. Under this statute, a limited partnership is formed by at least one general partner and one or more limited partners. A general partner manages the partnership and has full personal liability for the debts of the partnership. A limited partner contributes cash or other property. His liability for partnership debts is limited to the amount of his investment in the partnership. Limited partners do not participate in the management of the partnership. A limited partnership also files an information tax return, but income is taxed to the individual partners. Limited partnerships are required to file with the Department of the North Carolina Secretary of State < http://www.secretary.state.nc.us/corporations/thepage.aspx> and pay the required filing fee. An annual report and fee are required.

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

Limited liability partnership

A limited liability partnership, also called a registered limited liability partnership (RLLP), is a general partnership used by professionals such as attorneys. N.C.G.S. Chapter 59, Article 3B. An individual partner has all of the liability of any general partner except that one partner is not liable for the malpractice of another partner (unless he participated in that malpractice). The RLLP, as the name implies must be registered with the Department of the North Carolina Secretary of State and is not an appropriate entity for an agricultural, forestry, and horticultural operation. Foreign limited liability partnerships that are created under the law of another state must register with the Department of the North Carolina Secretary of State. N.C.G.S. Chapter 59, Article 4A.

Limited liability company (LLC)

The LLC is a distinct entity that is a hybrid of a partnership and a corporation. N.C.G.S. Chapter 57C. North Carolina law authorized this type of business entity effective 10/1/93. It can be treated like a partnership, an S corporation or a C corporation for tax purposes. Like a corporation, the members have limited liability for debts of the LLC. This business entity offers more flexibility because of its hybrid nature. The LLC is technically not allowed to have an unlimited life, as a corporation is, but it may have orderly transfer provisions. Membership interests are not freely transferable without consent of all other members, but a member may assign his economic rights, but not his voting rights. The statute now requires only one member to create an LLC. [The statute originally required at least two members.] This business entity is often used in estate planning because it can be an efficient way to manage and transfer assets over time to the next generation.

Corporations

A corporation is a legal entity, created under state law, that has rights and liabilities separate from its shareholders. N.C.G.S. Chapter 55. A shareholder of a corporation is only liable for the debts of the corporation to the extent of his investment in the corporation. Shareholders elect a board of directors who set policy and appoint officers to manage the company on a daily basis. Shareholders do not participate directly in management decisions (unless they are also directors or officers). A corporation has a potentially unlimited life, and it is not dissolved by the death of a shareholder, director or officer.

Generally, shares of stock are freely transferable by the stockholder. However, North Carolina law permits the creation of restrictions on stock transfers under the articles of incorporation, bylaws, an agreement among shareholders, or an agreement between shareholders and the corporation. Such restrictions must be authorized by statute and not unconscionable under the circumstances, and there must be a conspicuous notice of the restriction on the certificate or in the information statement required by the statute. One type of restriction would be a buy-sell agreement between a stockholder and the corporation or other stockholders requiring the selling stockholder to offer his stock first to the other party to the agreement. The agreement would set a price to be paid for the shares, which would be particularly useful if the shares were not publicly traded.

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

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

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

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

If the corporation fails to file annual reports or pay the franchise tax, for example, the Secretary of State may administratively dissolve the corporation.

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

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

Professional corporations
Professional corporations are another type of corporation used by professionals such as attorneys for their practice. N.C.G.S. Chapter 55B. Such an entity is not appropriate for agricultural, forestry, and horticultural operations.

Nonprofit corporations
These entities are corporations organized for charitable purposes including education. N.C.G.S. Chapter 55A. These entities are expected to fulfill a charitable purpose and are not designed to make a profit. These entities include family foundations that are often used by wealth families to carry forward the family's charitable activities.

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

Cooperatives
Cooperatives are another type of entity that may be used both by groups of farmers and for individual farm businesses. Most cooperatives are organized as corporations; however, ownership of shares is restricted to the customers of the business. Profits of a cooperative are all eventually distributed to the members as a cooperative is not designed to make a profit. The U.S. Department of Agricultural provides both technical and financial assistance to farmers who wish to form cooperatives.
< http://www.rurdev.usda.gov/rbs/pub/newpub.htm>
Agricultural cooperatives are granted favored treatment under both tax and antitrust laws. <http://www.rurdev.usda.gov/rbs/pub/cir59.pdf>

Trusts
Agricultural, forestry, and horticultural operations may also be operated through trusts. The most common type of trust employed for this purpose is a revocable living trust that also functions as a will substitute. However, other business trusts are authorized under North Carolina law. N.C.G.S. Chapter 39, Article 8.

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

TAXATION OF ENTITIES
Business entities become subject to various taxes over the course of entity existence. The sole proprietorship is subject to several taxing authorities during the life of the proprietor, but upon death, the proprietorship terminates, an estate is created and the estate of the decedent proprietor may be subject to estate taxes. In

contrast, unless specified in the articles of incorporation a corporation does not "die" and can continue into perpetuity.

However, we have seen recent large scale "deaths" of corporations; however, the death of a corporation does not create a "probate estate" in the common usage of the term. It is important for business operators to not let the "tax tail wag the business dog". Fundamentally, sound business decisions made using good business principles should be the focus of the business's management team. Once a business decision is made and the course of action implemented use of appropriate tax rules to optimally minimize the tax burden naturally follows. Income Tax.

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

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

Property tax

Generally, the only exemption for payment of property tax is that of a qualified non-profit organization. All other business entities pay property tax on the personal and real property owned for business purposes. Under North Carolina law, present use valuation is available to businesses engaged in agricultural, horticultural and forestry production. An application process is found in the N.C.G.S. § 277 if land is not currently under present use valuation used in primary industry production. In some cases land can transfer from one owner to another (such as an inheritance with continued farming) and remain under present use taxation for property tax purposes.

Care must be used if business owners create a new business entity, such as a LLC, that will own land. In the organizational documents, a statement of purpose for the use of this land is needed to preserve present use property taxation. Here is an example of the language that can be used: *"This business entity is owned by natural persons listed as co-owners and a principal business purpose includes the production of commercial forestry crops (or horticultural or agricultural, whichever is appropriate)".*

Formation of a family foundation with the land as an asset of the foundation will remove any lands from present use valuation purposes.

Sales and Use Tax

Farmers and farming business entities can apply for sales tax exemption on the inputs they purchase for their farming business. An eligible farmer should complete and submit Form E-595E, Streamlined Sales Tax Agreement Certificate of Exemption, to vendors as documentation that the property being purchased is exempt from sales and use tax. The certificate of exemption requires a farmer to have an Agricultural Exemption number issued by the North Carolina Department of Revenue. Form E-595EA is used to obtain an exemption number.

Franchise Tax

Certain business entities are required to remit franchise tax. Whether this tax is due is dependent upon the organizational structure of the business. Corporations and LLCs are generally required to pay to the North Carolina Secretary of State this franchise tax. Certain persons and partnerships may be required to pay the franchise tax for the privilege of conducting business in North Carolina. [N.C.G.S. § 105-114(a)] The franchise tax is based on a rate of $1.50 per $1,000 of valuation.

Gift Tax

Gift taxes, both federal and North Carolina, are imposed on natural person donors. Generally business entities do not make gifts. However, under certain circumstances a closely held corporation may transfer

property without consideration to an individual donee (natural person) where the shareholders are deemed to make the gift [Treas. Reg. 25.2511-1(h)(1)]. Federal and North Carolina have the same annual gift exclusion amount of $12,000 per donee. Lifetime gift exclusion amounts are different for the two jurisdictions; the federal lifetime exclusion is $1,000,000 and North Carolina has a $100,000 life time gift exclusion. Generally the donor is responsible for payment of gift taxes. However, if the donor does not make payment, the obligation falls to the recipient of the gift.
For donors of closely held business interests (corporate stock, LLC membership or partnership interests) a discount may be used to reduce the value of the gift. Recently IRS has allowed a 20 percent discount for lack of control (minority interest) and a second 20 percent discount for lack of marketability. Care should be given not to become too greedy with the use of discounts.

Estate Tax
A natural person's (decedent) estate may become subject to estate tax. This is dependent upon the size of the taxable estate. Presently in 2008 an estate becomes taxable if the asset values in the taxable estate exceed $2,000,000. In 2009 this value increases to $3.5 million. Under present law, in 2010, the estate tax is repealed. However, in 2011, the changes in the estate tax laws of the past ten years sunset and prior law returns; estate tax will be owed on taxable estates of $1,000,000 or more. Congress may pass permanent legislation to correct what has become a planning nightmare.

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

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

Observation of formalities such as holding necessary meetings and keeping minutes of those meetings must be strictly followed if the benefits of forming the entity that were hoped for are to be actually achieved. All required filings must be made and fees and taxes paid to avoid involuntary dissolution of the entity. The consequences of involuntary dissolution are often disastrous. Although most North Carolina landowners will want to create there entity under North Carolina law, there may be valid reasons to create the entity under the law of another state. If that is done the foreign entity must be domesticated by filing with the Department of the North Carolina Secretary of State. It is also possible to make certain determinations about how disputes among the owners will be resolved. Among the issues that may be resolved in advance are valuation of assets upon dissolution, choice of the state law applicable to the dispute, the forum for resolving the dispute, and whether to employ alternative dispute resolution tools such as arbitration or mediation.

What is a buy-sell agreement?

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

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

A buy-sell agreement allows the business owners to establish the value of the company and the value of ownership interests in a mutually beneficial agreement for all owners and their families. The agreement also avoids or reduces disruptions to the business operations after one owner leaves the business because the event has been planned for and management will continue. Planning for the future in this way assures the business's stability and continuity and provides job stability for the buying owner and other key employees. A buy-sell agreement also can prevent off-farm heirs or unqualified shareholders from obtaining an ownership interest, or selling an interest to an outsider. There are three types of buy-sell agreements including an entity purchase agreement, cross purchase agreement and a wait and see buy-sell plan.

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

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

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

Option Agreements

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

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

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

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

Worksheet

Checklist for Business Agreements

As you will note from the preceding article on business entities, a lot of decisions are required for constructing an agreement to meet your needs. The worksheet below identifies some of these decisions and provides space for you to jot down answers for discussion with your business partners, family members and professional advisers. The following list was developed by Jesse Richardson, JD, Virginia Tech.

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

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

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

What is A Conservation Easement?*

Editors note: One question that we have fielded consistently throughout the years is about conservation easements. Many a landowner has asked, "Is it a good way to go?" As you will see from the article below, it can have numerous positive benefits. The utility of the conservation easement as an effective tool in your farm transfer planning depends on your goals and financial needs, discussed earlier in this workbook, and explored futher in the narrative below. The following narrative was produced by the Conservation Trust for North Carolina in cooperation with the North Carolina Tobacco Trust Fund and land trusts across North Carolina. The narrative below is formatted to address frequent questions encountered from farmers and farm and forest landowenrs about these instruments.

Introduction

The Conservation Agreement can be an effective means of protecting and conserving land in North Carolina. Conservation agreements (sometimes called easements) have been used to protect lands as varied as mountain ridgetops, piedmont river corridors, farms, and coastal beaches.

Because conservation agreements have only recently become popular, most landowners are unaware of how useful this land protection tool can be. Conservation agreements enable landowners to preserve their land, maintain ownership of it, and usually realize significant tax savings or other financial incentives.
This brochure is designed to answer the basic questions that a landowner might have about conservation agreements. Before finalizing a conservation agreement, as with any real estate transaction, landowners should consult their personal legal and tax advisors.

What is a conservation agreement?

A conservation agreement is a written agreement between a landowner and a qualified conservation organization or public agency, in which:

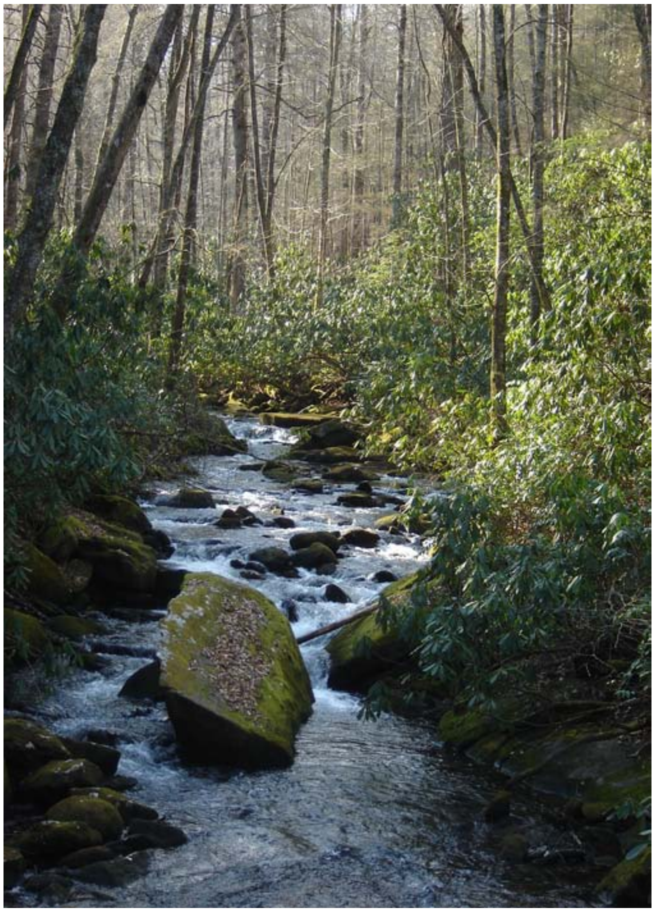
1. The landowner (Grantor or Donor) promises to keep the land in its natural condition without extensive disturbance, and
2. The conservation organization or public agency (Grantee) is granted the right to enforce the covenants of the agreement and to monitor the property.

The conservation agreement is similar to a declaration of restrictive covenants in a subdivision. That is, it contains a series of restrictions relating to various uses of land.

There are different types of conservation agreements, and they go by several different names. For example, a conservation agreement may also be referred to as a deed of conservation easement, a grant of development rights, a historic preservation agreement, a farmland agreement, a facade easement, a working forest easement and an agricultural easement.

Conservation agreements are intended to preserve property in its natural, undeveloped condition providing a benefit to the public by conserving open lands, forests, farmland, stream banks, and significant natural resources.

Because of this public benefit, there are significant fed-



eral, state, and local tax incentives for the landowner who donates a conservation agreement. And there are even some programs that make grants available for the purchase of conservation agreements from landowners on certain eligible lands.

When is a conservation agreement the right method for land protection?
While it is difficult to generalize, conservation agreements seem to work best when the following circumstances are present:

- the landowner is motivated by the desire to conserve and preserve the land;
- the land does not require intensive management;
- current and future uses of the land by the owner are compatible with preservation of its natural features; and
- the owner can utilize the tax advantages of an income tax deduction, tax credit, and/or a reduction in the value of his or her potential estate.

How long does a conservation agreement last?
Under North Carolina property law, a conservation agreement may be created for a period of years or it may be perpetual. However, if the landowner wishes to claim federal and state income tax deductions, the agreement must be granted in perpetuity.

What conservation purposes are recognized by the Internal Revenue Service?
To qualify as a charitable contribution for federal tax purposes, a conservation agreement must be perpetual, must be made to a qualified Grantee (generally a nonprofit organization or a public agency), and it must meet one or more of the following conservation purposes:

1. Protection of relatively natural habitats of fish, wildlife, or plants;
2. Preservation of open space including farm and forest land;
3. Preservation of land for public outdoor recreation or education;
4. Preservation of historically important land or buildings.

To determine whether the land will qualify under one or more of these conservation purposes, a natural resource inventory including maps, photographs of existing buildings and roads, a description of natural habitats, and a survey of wildlife should be prepared. The inventory allows the owner to decide which conservation purpose is met and will distinguish ecologically sensitive areas from other areas that might be appropriate for other uses.

What restrictions are contained in a conservation agreement?
A conservation agreement's restrictions should be tailored to the particular conservation values of the land and interests of the landowner and grantee. Examples of activities that may be prohibited or restricted in a conservation agreement include industrial or commercial use, mineral development or exploration, subdivision, residential use, access for road or power line construction, and extensive timbering.

What current and future uses do conservation agreements allow?
Depending on the size and character of the land, conservation agreements may allow subdivision of the land into parcels, timbering and forest management, agricultural use, wildlife management, hunting and fishing, or even the construction and maintenance of a limited number of new homes.

Can I put some land into the conservation agreement and leave some land out?
Sometimes it may be appropriate to make only a portion of a tract subject to a conservation agreement, and reserve a portion of the land for future development or unrestricted use. Some landowners may use different types of conservation agreements for different areas of their property. For example, an owner might use an agricultural agreement on upland farm fields, and a more restrictive conservation agreement on the adjoining riverbank lands.

Who is responsible for maintaining the property?
The Grantor retains ownership along with the right and duty to manage and care for the property. In some cases, where the conservation organization has special experience in managing a particular habitat that exists on the property (for example, rare species habitat), it may be appropriate for the Grantee to be given the right to undertake certain management tasks.

What are the tax advantages from donating a conservation agreement?
The Donor of a qualifying conservation agreement may claim the value of the conservation agreement

as a deduction for income and for gift and estate tax purposes. Tax reductions are not awarded for the sale of conservation agreements. Here are the details:

Federal Estate Tax

The conservation agreement can be an ideal legal technique for landowners whose goals include long-term conservation of their land for the benefit of future generations. Use of conservation agreements may help prevent the breakup of family farms or estates necessitated by otherwise heavy estate tax liability.

Conservation agreements can provide protection against the potential appreciation in property values over time. If the agreement has been granted during the Donor's lifetime, only the restricted value of property under a conservation agreement will be included in the owner's estate, resulting in a lower estate tax.

If the conservation agreement is granted by will, the Donor's estate may claim an unlimited charitable deduction for the value of the agreement, which has the same effect of reducing the estate tax.

In addition, up to 40% of the land's residual value (that is, its restricted value) may also be deducted from the Donor's estate in some special situations.

Federal Income Tax

If the conservation agreement gift is made during the Donor's lifetime and the land is long-term capital gain property, the Donor may claim a federal income tax deduction for the full fair market value of the conservation agreement.

However, to prevent a Donor from using the deduction to avoid paying tax, the Internal Revenue Service (IRS) places a cap on the amount of the deduction that can be claimed in the year the donation is made. The cap is set generally at 30% of the adjusted gross income for individuals. Individuals may carry over any unused portion of the donation for the next five years and deduct the same percentages each year.

For example, an owner who donates a conservation agreement valued at $100,000 and who has an annual adjusted gross income of $60,000 may deduct 30% of $60,000 ($18,000) in each of years 1-5 and the remaining $10,000 in year six. If the land is ordinary income property, the contribution is limited to the basis of the property; no deduction for unrealized appreciation is allowed.

State Income Tax

In North Carolina, a special income tax credit (i.e., dollar-for-dollar subtraction of owed income tax) equal to 25% of the fair market value of donated property (up to a maximum credit of $250,000 for individuals and $500,000 for corporations) is also available for gifts of land and conservation agreements made to

qualified Donees.

Any unused portion of the credit may be carried forward over the next five years and any remainder may be claimed as a regular charitable contribution deduction. The Donor must apply to the NC Department of Environment and Natural Resources for certification that the gift qualifies for conservation purposes in the public interest, and attach the certification to his or her tax return.

Local Property Taxes

North Carolina requires county tax assessors to consider the reduction in property value caused by the granting of any conservation agreement. The Donor should apply for a change in the ad valorem tax appraisal of land after an agreement is granted.

How is the value of an agreement determined for tax purposes?

An appraiser using the "before and after test" determines the value of a conservation agreement. That is, the value of the property as restricted by the conservation agreement is subtracted from the value of the property before the restrictions were granted. The difference between the two calculations is the value of the conservation agreement.

Frequently, the presence of a park or other conservation property is an amenity to adjacent land, and actually results in added value to the adjoining land. If the granting of a conservation agreement has this effect on any property owned by the Donor or Donor's family, the appraiser must reduce the value of the donated conservation agreement by the amount of any benefit to the other property.

A professional appraiser familiar with both the local real estate market and conservation agreements should undertake the appraisal. There are substantial penalties imposed on both the Donor and the appraiser for any overvaluation. Also, the Donor, appraiser, and the Grantee of the conservation agreement must all sign a special tax form in order for the Donor to claim a federal income tax deduction.

Can the land be subdivided, sold, mortgaged or bequeathed after an agreement is granted?

Yes, you can sell, mortgage, or otherwise convey the property. However, the land will remain subject to the conservation agreement. For example:

- The value of the land as security will be its value as restricted, not its potential value for all unrestricted purposes and uses;
- The property may be subdivided, subject to any specific prohibition or limitation in the agreement against subdivision; and
- Any rights reserved by the Grantor will be passed to any heir or purchaser

If there is a pre-existing deed of trust on the land, it must be subordinated to the conservation agreement before the agreement is granted.

Can a conservation agreement be amended or revoked?

Because conservation agreements are designed to be permanent, amendment or revocation is difficult. Revocation is usually accomplished only through a court proceeding and depends upon demonstrating that due to a change in circumstances (for example, in surrounding land use) the original conservation purposes of the agreement can no longer be sustained.

If the agreement is extinguished, the interest in the land (or the proceeds from any sale) is allocated to Grantee and Grantor, respectively, in proportion to the value of the agreement and the value of the land.

In rare circumstances an easement can be amended but only with the agreement of both parties. This is usually done to clarify an ambiguity in the easement. Amendments will not be allowed if they diminish the conservation values protected by the easement or somehow enrich the landowner without properly compensating the Grantee.

Is the conservation agreement a private or public document?
Since a conservation agreement must be recorded in the Registry of Deeds in the county where the land is located, it is a public document like any other land deed, easement or similar legal document.

Grantee organizations will cooperate with a Grantor who wishes either to publicize the gift (for example, a corporation may seek media coverage as part of its public relations program) or to minimize publicity (for example, a family that wishes relative anonymity).

Will the public have access to land under conservation agreement?
In almost all cases, a conservation agreement will not require or allow entry by the public. However, two types of conservation agreements do require either visual or physical access by the public to qualify as charitable contributions under the Internal Revenue Code. Those agreements are:

1. Scenic and open space agreements, in which the scenic character of the land is critical to its conservation value (visual, rather than physical, access to or across the property is sufficient);

2. Land areas set aside for recreation or education for the general public (these agreements are granted infrequently due to the extensive public access and use they require).

On the other hand, conservation agreements that protect significant natural environmental systems, such as fish, wildlife, or plant habitat, or forestland and farmland, where there is an official government policy to protect forestland and family farms from fragmentation, will not require public access.

What rights and obligations does a conservation agreement create in the Grantee?
The Grantee is required by the IRS to monitor and enforce the obligations contained in the conservation agreement. Thus, the conservation agreement should provide access to the property for the Grantee at least annually. The Grantor and Grantee may also decide that it is appropriate for the Grantee to be provided access for scientific research and occasional field trips by its members.

If the Grantor reserves rights, such as the right to timber or to subdivide, the Grantee may be required to review and approve the exercise of such rights.
The Grantee is even required to maintain sufficient assets to carry out its monitoring and enforcement obligations in the future. Therefore, organizations that agree to hold conservation agreements usually have a stewardship fund or endowment set aside for this purpose, and will usually raise money to add to this fund whenever a new conservation agreement is signed. The Donor and others interested in the project are generally asked to contribute to the fund.

What is required to complete and convey a conservation agreement?
For a Grantor to convey a conservation agreement that qualifies for a federal tax deduction, the following documents need to be prepared:

- Conservation Agreement Document (drafted by either the Grantee‘s or the Grantor‘s attorney)
- Inventory of the Property (prepared by a biologist, planner or other consultant)
- Appraisal (prepared by an independent appraiser working for the Grantor)
- Title work (prepared by an attorney)
- Survey and legal description (prepared by a surveyor)
- Form 8283 (an attachment to the federal tax return of all individuals claiming contributions more than $5,000, prepared by the Grantor or his accountant, and signed by the Grantor, Grantee and appraiser. If the deduction claimed is greater than $500,000, then the full appraisal must also be attached).

What organizations accept conservation agreements?
Conservation agreements may be granted to public agencies, such as the State of North Carolina, counties and towns, or to a nonprofit tax-exempt conservation organization, such as a land trust or conservancy.

**The foregoing narrative was written by Camilla Herlevich of the North Caroina Coastal Area Land Trust and Edward Norvell of the Conservation Trust for North Carolina (CTNC), with editing and project management by Reid Wilson, Jan Pender, Rusty Painter of the CTNC. The article was circulated in pamphlet form with funding from the North Carolina Tobacco Trust Fund Commission.*

Notes

Understanding Property Tax Valuation of Agricultural, Forest, and Horticultural Lands

Editor's note: The subject of present-use valuation is one that often comes up in education events. As noted below, there are a number of nuances of the present-use law of which landowners and their advisers should be aware as they make plans for transferring property interests, through estates, by sale or gift, or as interests in a business entity. The following article was written and presented by Stephen Woodson, Associate Counsel to the NC Farm Bureau Federation, to the participants of the 2008 *Rural Lands Update* professional credit series.

Introduction

Transfers of real property are always fraught with tax consequences. Tax attorneys and accountants are accustomed to advising clients on the income tax and estate and gift tax consequences of land transactions. Sometimes the property tax consequences of land transactions get lost in the shuffle. In cases where the land at issue is agricultural land, horticultural land, forest land or land managed for wildlife habitat that is assessed at its present-use value, this can be quite unfortunate. A failure to understand the laws governing the present-use value program for agricultural land, horticultural land, forest land and wildlife habitat can cost the seller thousands in deferred taxes he might have otherwise avoided. It can also cost the buyer, who might be unaware that the land he just obtained is eligible for present-use value assessment.

This article offers a brief primer on the present-use value program The main focus will be the impact of present-use value on land transactions: When deferred taxes are due and when they can be avoided; when the land can qualify immediately for present-use value treatment in the hands of the grantee and when the grantee will have to wait four years or forego present-use value treatment altogether.

Eligibility Requirements for present-use value

Ownership

All property qualifying for present-use value must be "individually owned." This term includes the following types of ownership:

1. A **natural person -** To qualify for present-use value, land that is owned by a natural person must be

either: a) the person's place of residence; b) owned by the current owner or a relative of the current owner for the four years preceding the year for which presentuse value assessment is sought; or c) a distribution of qualified present-use value land from a trust or business entity to a member of such trust or business entity.
2. A **business entity** whose principal business is agriculture, horticulture or production of forest products and whose members are all natural persons who are either a) actively engaged in the business of the entity; b) a relative of a member who is actively engaged in the business of the entity; or c) a devisee of a relative who met condition (a) or (b). A business entity whose members are all relatives may meet requirements (a) and (b) by leasing the land to an operator who uses the land for agriculture, horticulture or forest product production.
3. A **trust** that was created by a natural person who transferred the land to the trust and each of whose beneficiaries who is currently entitled to receive income or principal meets one of the following conditions:
a) Is the creator of the trust or the creator's relative;
b) Is a second trust whose beneficiaries who are currently entitled to receive income or principal are all either the creator of the first trust or the creator's relatives. A **testamentary trust** that meets all of the following conditions: a) it was created by a natural person who transferred to the trust land that qualified in that person's hands for present-use value; b) at the time of the creator's death, the creator had no relatives; and c) the trust income, less reasonable administrative expenses, is used exclusively for educational, scientific, literary, cultural, charitable, or religious purposes.
4. **Tenants in common**, if each tenant is either a natural person or a qualifying business entity.

It is important to note that, if the farm unit consists of multiple tracts, each tract must either be under the exact same ownership or must qualify for present-use value on its own. (See the discussion of what constitutes a farm unit below.)

Size

All qualifying land (except land engaged in aquaculture) must meet a minimum acreage requirement. The statutory minimums are:

- For agricultural land – 10 acres
- For horticultural land – 5 acres
- For forest land – 20 acres

Agricultural land generally consists of land producing basic agricultural commodities (e.g. corn, soybeans, wheat, cotton, tobacco or peanuts) or livestock. Horticultural land produces commodities such as fruits, vegetables, ornamentals or Christmas Trees. To be included acreage for the purposes of these minimums, land must be in actual production.

Smaller acreages may qualify for present-use value if they are in actual production and are part of the same farm unit as a tract that qualifies on its own. To be considered part of the same farm unit, tracts must be a) under the same ownership; b) under the same classification; and c) either within the same county or within 50 miles of each other.

Income

Agricultural land and horticultural land must also produce a minimum income to qualify for present-use value. Each farm unit must contain at least one tract that has produced an average yearly gross income of $1,000.00 for the three years preceding the calendar year of the application or audit. In determining income for present-use value qualification, County Tax Assessors must consider the value of production of agricultural or horticultural commodities produced on the land. If the landowner receives rent from a farm operator who is farming the land, such rental payments may not be considered income for present-use value qualification. Conservation Reserve Program payments to the landowner and payments to the landowner from the federal tobacco quota buyout are considered income for the purpose of the minimum gross income requirement.

Management

For land to be eligible for present-use value assessment, the County Tax Assessor must find that it is being operated under a program of sound management. Agricultural or horticultural land is conclusively presumed to be under sound management if the landowner can show any of the following:
1. Enrollment in and compliance with and agency-administered and approved farm management plan;
2. Compliance with a set of best management practices;
3. Compliance with a minimum gross income per acre test;
4. Evidence of net income from the farm operation;
5. Evidence that farming is the farm operator's principal source of income;
6. Certification by a recognized agricultural or horti-

cultural agency within the county that the land is operated under a sound management program.

The County Tax Assessor may also look at other similar criteria if the land owner cannot show any of the six enumerated above. Forest lands may show sound management only by an approved written management plan which includes the production and sale of forest-products.

Application for Present-use value
If a property is not currently in present-use value, an initial application must be timely filed during the regular listing period. The regular listing period is typically January 1 through January 31 of each year. An initial application may also be filed within 30 days of a notice of change in value. The local board may a prove certain untimely applications if good cause is shown for failure to file a timely application. If a property is currently in present-use value and meets the requirements for continued qualification of transferred property without removal from present-use value, the new owner must file a new application within 60 days of the date of transfer.

Deferred Taxes
Land that meets all of the requirements above will be assessed at its present-use value. The County Tax Assessor will determine both the fair market value and the present use value of the land and will tax the land at the present-use value. Generally, the present use value of land in North Carolina is substantially less than its fair market value. The property tax on the difference between the fair market value and the present-use value of the land is deferred until such time as the land ceases to qualify for present-use value assessment. The deferred taxes constitute a lien on the land.

When present-use value land ceases to be eligible for the program, the deferred taxes for the current tax year and the three tax years immediately preceding the disqualification become immediately due and payable along with interest. Interest accrues as if the taxes had become payable on the dates on which they originally became due. The tax that is payable when land is disqualified for present-use value assessment is commonly known as the rollback tax. Although who pays the rollback is an issue that can be negotiated in a real estate closing, the grantor is ultimately responsible for its payment.

Changes in Ownership
As a general rule, a change in ownership will cause present-use value land to be removed from the program and will trigger billing of the rollback tax. Also, the new landowner will have to hold the land for four full years before the land will again qualify for *present use value*. There are, however, numerous transfers that are exceptions to these rules. These are:
1. Transfers to a **qualifying business entity** created by the current natural person owner (*See the ownership section above as to qualifications for business entities*.)
2. Transfers to **another farmer** who agrees to maintain the current use and accept responsibility for the rollback tax - This “farmer to farmer” transfer exception to the rollback tax was enacted in 2004 For a transfer to qualify, all of the following conditions must be met: a) he land was appraised at its present-use value at the time title to the land passed to the new owner; b) the new owner will continue to use the land for the purposes it was classified for appraisal at its present-use value under the previous ownership; c) the land will continue to meet all the applicable size requirements. If the new owner does not own any other land in present-use value, the land must be able to meet the size requirements for an initial qualifying tract. If the new owner already has a qualifying tract of the same classification in use value, the transferred land may be less than the minimum initial required acreage if the land can properly be considered an additional tract of the existing farm unit; d) the new owner must file an application for present-use value within 60 days of the date of transfer; and e) the new owner certifies that he will accept responsibility for the deferred taxes. If the new owner farms the tract for at least three years, the assumption of liability for the existing deferred taxes will not increase his deferred tax liability if he should subsequently sell the tract.
3. Transfers by **gift to a nonprofit organization** for a use that qualifies for exclusion from the tax base pursuant to N.C.G.S. §105-275(12) or N.C.G.S. §105-275(29).
4. Transfers of land that is subject to a **qualifying conservation easement** – If property is appraised at its present-use value at the time it becomes subject to a conservation easement that qualifies for the state’s Conservation Tax Credit, it will continue to qualify as long as the easement is in place and the landowner continues to comply with the terms of the easement. Such land no longer has to meet any income or management requirements.

Conveyances Of Present-Use Value Land Where The Land Will Immediately Qualify For Present-Use Value In The Hands Of The New Owner. Generally, when present-use value land is conveyed, the new owner will have to wait four years before the land may again qualify for present-use value. However, in the exceptions to the rollback tax numbered 1, 2, and 4 above, the qualification of the land for present-use value will also be uninterrupted. Additionally, if a new owner of land in the present-use value program already owns other land that is in present-use value, the new tract will qualify for present-use value assessment immediately if the circumstances are as follows:

1. At the time of transfer, the land being transferred was being used for the same purpose as the land owned by the new owner that is already in present-use value. What is meant by the term "same purpose" is not clear. Some assessors will require that the land continue to produce the same commodity or type of commodity. For example, if the grantee purchases pastureland to use as row crop land, the assessor might require the grantee to wait four years before qualifying the land for present-use value. However, other assessors will allow the land to stay in present-use value as long as it continues its current classification (i.e. agricultural, horticultural or forest)
2. At the time of transfer, the land being transferred was eligible for present-use value with regard to production and sound management requirements.
3. The new owner timely files a new application during the next listing period. Since properties attempting to qualify under this exception were either not in present-use value at the time of transfer or were removed from present-use value due to the transfer, the property will need to qualify under an initial application.

Transfers to a relative
This is another exception to the requirement that land be owned for four years before it is eligible for present-use value. If the new owner is holding title to the land in his or her own name ("natural person" ownership) and the land meets the other present-use value qualifications, then the land can qualify for present-use value immediately in the hands of the new owner. The statutes define "relative" as: a spouse, a lineal descendant of the landowner or spouse, a sibling of the landowner or spouse or their lineal descendant or an aunt or uncle.

Changes in Use
If the current owner changes the use of land that qualifies for present-use value, such change may disqualify the land and trigger billing of the rollback. Certainly that is the case where the change is to a non-qualifying use. However, questions arise where the change in use is from one qualifying use to another qualifying use.

The present-use value statutes contain no provisions regarding changes from one qualifying use to another. The following analysis, except where noted comes from guidelines provided to County Tax Assessors by the North Carolina Department of Revenue.

Conversion to Forestry from Agriculture or Horticulture
A qualifying agricultural or horticultural tract that is being converted to forestry should likely be allowed to continue in present-use value, as long as the tract contains at least 20 acres in forest product production. The conversion should be done quickly and should not take more than one agricultural or horticultural growing season. Otherwise, the land will be out of production and should not receive present-use value if lying unused.

Upon completion of the conversion, the owner should file an updated application during the next regular listing period. The owner must submit with the application a sound management plan for the commercial production of timber.

Conversion to Agriculture from Horticulture
Conversion to agricultural classification from horticultural classification will likely always qualify if the horticultural tract has at least 10 acres in production. The horticultural tract was already satisfying the income requirement and therefore was in production for at least the last 3 years. Additionally, the new agricultural crops will immediately begin producing income, thus continuing to meet the income requirement.

The conversion should be done quickly and should not take more than one agricultural or horticultural growing season. Otherwise, the land will be out of production and should not receive present-use value if lying unused. Upon completion of the conversion, the owner should file an updated application during the next regular listing period.

Conversion to Horticulture (Annual Crops) from Agriculture
Conversion to annual horticultural crops from agricultural classification will likely always qualify if the agricultural tract converted contains at least 5 acres in production. The agricultural tract was already satisfying the income requirement, and therefore was in production for at least the last 3 years.

Additionally, the new annual horticultural crops will immediately begin producing income, thus continuing to meet the income requirement. The size requirement would be met also (assuming that the agricultural tract converted qualifies for present-use value on its own and not as part of a larger farm unit) since the agricultural size requirement is 10 acres and the horticultural requirement is only 5 acres.

The conversion should be done quickly and should not take more than one agricultural or horticultural growing season. Otherwise, the land will be out of production and should not receive present-use value if lying unused. Upon completion of the conversion, the owner should file an updated application during the next regular listing period.

Conversion to Horticulture (Perennial Crops) from Agriculture
Conversion to perennial horticultural crops (orchards, vineyards, etc.) from agricultural classification should likely not qualify, but this scenario is slightly more troublesome. The agricultural tract was already satisfying the income requirement, and therefore was in production for at least the last 3 years. However, the new perennial horticultural crops will not begin producing income for a number of years, thus failing to meet the income requirement.

Conversion to Agriculture or Horticulture (Annual Crops) from Forestry
Conversion to agricultural or horticultural classification from forestry classification is the most difficult scenario. If the land is immediately cleared and then planted in annual crops, the land will immediately begin producing income. There was no income requirement when the land was in forestry. However, there is an income requirement for agriculture and horticulture. Technically, upon conversion, the tract will not be able to show that it has produced an average gross income of $1,000 for the three preceding years, but the tract will be able to immediately show income.

If the conversion is done quickly and does not take-more than one agricultural or horticultural growing season, the assessor may consider allowing the property to continue in present-use value. The tract does not meet the technical income requirements but may (or may not) come close to meeting the overall intention

of the present-use value statutes. The other conversion scenarios lend themselves to clearer guidance as to whether the conversion should be allowed with continued classification or whether a disqualification should occur.

This particular scenario falls somewhere between the others. The assessor will have to decide whether to adhere to the technically correct interpretation, or take a position that may or may not be more in line with the estimated intent of the present-use value statutes.

Notice of Change in Use

The owner has the responsibility and duty to notify the assessor of any change that could disqualify all or a part of a tract of land receiving present-use value. Notice to the assessor must include complete information regarding the change and notice must be given before the close of the listing period following the change in use. Any property owner who fails to notify the assessor of potential disqualifying changes will be subject to a penalty of ten percent (10%) of the total amount of the deferred taxes and interest thereon for each listing period for which the failure to report continues.

Present-Use Value for Lands Managed for Wildlife

The 2008 General Assembly made a major addition to the types and to the amount of land that is eligible for present-use value treatment. Beginning in tax year 2011, some lands managed for wildlife conservation may receive present use value tax status. Land will qualify for present-use value as wildlife conservation land if it meets the following size, ownership, and use requirements:

Size

The land must consist of at least 20 contiguous acres. Unlike other types of presentuse value land, wildlife habitat will have a maximum size of 100 acres per owner, per county.

Ownership

The land must be owned by an individual, a family business entity, or a family trust. Land owned by a business entity is not eligible for this classification if the business entity is a corporation whose shares are publicly traded or one of its members is a corporation whose shares are publicly traded. The land must have been owned by the same owner for the previous five years, except as follows:

1. If the land is owned by a family business entity, the land meets the ownership requirement if the land was owned by one or more members of the family business entity for the required time.
2. If the land is owned by a family trust, the land meets the ownership requirement if the land was owned by one or more beneficiaries of the family trust for the required time.
3. If an owner acquires land that was classified as wildlife conservation land under this section when it was acquired and the owner continues to use the land as wildlife conservation land, then the land meets the ownership requirement if the new owner files an application and signs the wildlife habitat conservation agreement in effect for the property within 60 days after acquiring the property.

Use

The land must be managed under a written wildlife habitat conservation agreement with the North Carolina Wildlife Resources Commission that is in effect as of January 1 of the year for which the benefit of this section is claimed and that requires the owner to do one or more of the following:

1. Protect an animal species that lives on the land and, as of January 1 of the year for which the benefit of this section is claimed, is on a North Carolina protected animal list published by the Commission under N.C.G.S. §113-333.
2. Conserve any of the following priority animal wildlife habitats: longleaf pine forest, early successional habitat, small wetland community, stream and riparian zone, rock outcrop, or bat cave.
3. One of the following: a) it must have been classified under G.S. §105-277.3 when the wildlife habitat conservation agreement was signed, or b) the owner must demonstrate to both the Wildlife Resources Commission and the assessor that the owner used the land for a purpose specified in the signed wildlife habitat conservation agreement for three years preceding the January 1 of the year for which the benefit of this section is claimed.

Land qualifying for present-use value as wildlife habitat which was previously qualified as agricultural, horticultural or forest land may revert back to its original classification without penalty. However, land that qualifies originally as wildlife habitat will be assessed the rollback tax and will have to sit out of the program for four years if the owner wishes to change the use to agriculture, horticulture or forest production.

Glossary

Editor's note: The following glossary has been referenced from a number of sources, including *Black's Law Dictionary* (5th ed.), the *Working Lands Preservation Manual for Conservation Districts*, and other sources on real estate, agriculture, and business law.

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

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

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

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

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

Agricultural Conservation Easement: Generally describes a conservation easement which restricts development or improvement to a parcel to agricultural uses.

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

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

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

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

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

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

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

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

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

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

Attorney at Law: A lawyer, licensed to practice law, an officer of the court employed by a party to manage a matter before the court.

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

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

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

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

Boiler plate: Language considered standard to contracts and other written agreements, designed to limit liability for certain contingencies such as loss or damage to property, or non-performance of contract. Paragraphs of boiler-plate can appear identical in any number of contracts.

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

Capital: A portion of accumulated wealth used or production of additional wealth.

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

Capital Gain: Profit that results from the sale or exchange of an asset over its value when first acquired by seller (see Basis).

Cartway: An access road to real property created by a special proceding authorized by state statute to allow use of the property for certain commercial purposes, such as agriculture.

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

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

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

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

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

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

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

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

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

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

Conservation Tax Credit: A credit against state income tax owed, available to individuals and business entities, for the donation of real property, in perpetuity and for a conservation purpose, to an IRS or state department of revenue qualified entity.

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

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

Covenant: A deed or land restriction that is intended to limit the use of the land by the current owner and all future owners. It is a non-possessory interest in land in one form as an agreement between adjoining landowners to do something (affirmative covenant) or to refrain from doing something (restrictive covenant) with relation to the land. Each covenant has two sides: the burden and the benefit. The burden is the promisers duty to perform the promise and the benefit is the promisee's right to enforce the promise.

Decedent: A dead person.

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

Deed Restriction: (note: sidebar: The shortcomings of deed restrictions) A limitation in a deed to a parcel of property that seeks to limit the use of that parcel by the subsequent owner.

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

Development Rights: The term applied to a landowners right, subject to governmental restrictions such as zoning, to subdivide and sell property for residential or commercial development.

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

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

Dominant Tenement: A parcel of land that carries a right to use all or a portion of a neighboring parcel of land.

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

Eminent Domain: The superior right of property subsisting in every soverign state to take private property for public use.

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

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

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

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

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

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

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

Farmland Protection Program: A program that uses public monies for the purpose of purchasing development rights from farmland.

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

Fiduciary: A relationship based upon trust or confidence.

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

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

Grantor: Term used to describe the person or entity that relinquishes an interest in property by sale, gift or trade. For example, a landowner is the grantor when allowing a power utility (the grantee) to run pipe or power lines across his land.

Ground Lease: The separation of ownership of land from ownership of buildings and improvements to the land.

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

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

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

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

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

Holographic Will: A will written in the handwriting of the person who creates it and signed by that person. This type of will is valid in North Carolina without the witness signatures, but must be found where one might keep an important document.

Homestead: Real property owned by a person under special legal restrictions and exemptions from claims of creditors.

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

Improvements to land: Structures erected on a site to enable its utilization for a certain purpuse (ie. a barn for farming).

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

Income Tax Deduction: A decrease in federal income tax due due to a purchase or sale action by the taxpayer. (E.g. In exchange for a permanent donation of an easement or land to a qualified land protection agency or nongovernmental organization.)

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

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

Installment Contract: Purchase of real estate upon an installment basis, where upon default, payments are forfeited.

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

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

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

Landowner: An owner of land and its associated or deeded rights.

Lawyer: An active member of the North Carolina Bar who has earned the right to practice law in North Carolina, which may include real estate law.

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

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

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

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

Legacy: A disposition of personal property under a will.

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

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

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

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

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

Life Estate: An estate or interst held during the term of some certain person's life.

Limited Liability Company (LLC): A form of busines entity often referred to as a "hybrid" of the corporation and partnership forms forms of business entity. Owners can be divided into "managers" (with management responsibility) and "members" (with equity ownership). An LLC is governed by an written *Operating Agreement.*

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

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

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

Mediation: The act of a third person to settle the dispute of two contending parties.

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

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

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

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

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

Nonprofit: An organization that operates for the purpose of assisting other individuals, groups, or causes rather then garnering profits for themselves. Nonprofits have various designations that are awarded by the federal government under federal tax code.

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

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

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

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

Partnership: A voluntary contract between two or more persons to place money, labor, skill or a combination thereof for the purpose of making a profit, with the understanding of a proportional sharing of profits and losses between them. Partnerships can be created under written contract or implied by law due to actions of the parties.

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

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

Permanent Conservation Easement (Perpetuity): An easement that is written so that it does not expire. Only a permanent easement qualifies a landowner for a tax break.

Personalty: Personal property (ie. not real estate)

Power of Attorney: An instrument authorizing a person to act as the agent or attorney in fact of the person granting it; such power may be limited or general according to the terms of the instrument.

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

Preservation: Leaving a resource undisturbed and free from harm or damage, such as preserving wetlands by forbidding development on or near them.

Probate: The judicial process by which the validity of a will is formally determined, and that oversees the execution of the will.

Property: The right or interest which an individual has in lands and chattles to the exclusion of others.

Purchase of Development Rights: A term that commonly describes the cash purchase of development equity in real estate, as in the sale of a conservation easement. Cash is paid for all or a portion (as negotiated) of the difference between the value of a parcel with a subdivision restriction and the same parcel if there were no subdivision restriction.

Quit Claim Deed: A deeed given when the grantee already has, or claims, complete or partial title to the property and the grantor has a possible interst that otherwise would constitute a cloud upon the title.

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

Remainder Interest: An estate in property created at the same time and by the same instrument as another estate and limited to arise immidiately upon the termination of the other estate.

Residuary Estate: Wealth which remains of an estate after debts, administrive expenses, legacies and devises have been satisfied.

Right of First Refusal: Where an owner of property promises another that, if the owner decides to sell the property in the future, the promisee will have the first chance to buy at a certain price of the opportunity to match offers made by others for the purchase of the property.

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

Riparian: Pertaining to the banks of a river, stream, waterway.

Riparian Owner: One who owns lands bounding upon a river or water course.

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

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

Statute of Frauds: A state law that provides that certain contraacts, including conttacts for the sale of land, mut be in writing in order to be legally enforceable.

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

Tax Credit: A dollar-for-dollar reduction in the income tax payment required of a person. A tax credit means that specific actions as spelled out in state tax law are followed.

Tenancy at Will: A license to use or occupy lands at the will of the owner.

Tenancy by the Entirities: A form of joint tenancy held by husband and wife, with right of survivorship. Upon the death of one spouse the other spouse owns the entire property.

Tenancy for Years: A non-freehold estate created by the leasing of property for any fixed, definite period of time, whether such period be one weeek, one monty, one year, ten years, or any other definite period of time.

Tenancy in Common: A form of estate held by two or more persons, each of whom is considered as being possessed of the whole of an univided part. Ownerhip interst tranferrs to legal heirs upon death of owner.

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

Testate: The condition of own who leaves a valid will at death.

Trust: A relationship, evidenced by a written instrument, where one person (a trustee) holds legal title to property for the benefit of another person (a beneficiary).

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

Voluntary Agricultural District (VAD): A county ordinance that creates a program whereby agricultural and forest landowners can voluntarily relinquish the right to develop their property in return for certain benefits. An *Enhanced* Voluntary Agricultural District (EVAD) is a similar program offering additional benefits to landowners.

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

Working Lands: Term of art describing farm, forest and horticultural land that is kept in it's intended use for the purpose of generating income and making it affordable for the landowner to continue owning the land over an extended period of time.

Zoning: The exercise of police power of a municipality or county in regulating and controlling character and use of property. Zoning commonly includes regulation on the kinds of activities which will be acceptable on particular lots (such as open space, residential, agricultural, commercial or industrial) and the densities at which those activities can be performed. Towns and cities in North Carolina are allowed to zone farmland, whereas counties are not allowed to take this action under NC law.

NCFTN

North Carolina Farm Transition Network

www.ncftn.org