TRANSFERRING WEALTH

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PASSING FORESTLAND TO THE NEXT GENERATION SHOULD BE PART OF A BROADER ESTATE PLAN THAT CONSIDERS EVOLVING TAX LAWS, GIFTS, AND LIFE AFTER YOU'RE GONE.

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Your forestland might be your family's largest, most valuable asset in economic, recreational, or even purely sentimental respects. Take a moment to consider, however, what might happen to your forestland after you have passed away. As unpleasant as this exercise is, it's important to consider the question, "Do I know for certain who will own my land after I am gone?"

Whether you own 10 acres of forestland or 100,000 - and no matter how you use it – it's crucial to start planning how you want to pass it on after you are gone. A well-crafted estate and succession plan that considers the factors discussed in this article can help ensure that your forestland does not just continue to benefit your family now but for generations to come.

PLAN NOW OR RISK LOSING FAMILY LAND

The main reason to start planning now is to guarantee that your land goes to those you want after your death. A lack of a well-crafted plan puts your family at risk of losing your forestland after the death of you, the first-generation owner.

For instance, many who inherit forestland might not want it, live far away from it or lack the financial resources or knowledge to manage it. Further, even the tightest-knit families can disagree on how to use inherited land without a clear directive. Alternatively, even if your heirs wish to keep the land and all agree, they could face unforeseen legal or financial challenges down the road that could subject the land to liens or liquidation for the benefit of creditors. Planning helps mitigate these risks and ensures that your property goes to the people in your family who want it, can safely hold it, and are most capable of managing it.

Families also risk losing inherited property if they do not plan for tax issues accompanying the transfer. Depending on the total value of all your assets at death, your estate may be taxable— subject to federal and state estate taxes, depending on where you lived.

An estate tax bill can be substantial. Suppose your estate is not sufficiently liquid to pay it. In that case, your loved ones might face the difficult decision to sell assets rather than pass them along to your intended beneficiaries. Without proper planning, your forestland could be among these assets. Conversely, with adequate planning, you can help your family save millions in taxes and avoid the difficult circumstances of liquidating family property.

AS (UN)CERTAIN AS DEATH AND TAXES

Any informed decision about succession planning requires knowledge of current tax law and how that law might change in the future. The most important thing to consider is the value of the unified transfer tax credit - the combined exemptions from federal estate and gift tax. This "hot-button issue" for politicians has created uncertainty for families with valuable or appreciable assets.

The estate tax is imposed at death on the monetary value of all assets above the exemption amount owned at your death. In 2023, the federal exemption threshold is $12.92 million per person. Every dollar above that amount is taxable up to 40 percent.

While this might sound like a lot of money, the IRS calculates the value of all property owned at the time of death, including liquid and nonliquid capital assets such as real property, stocks and bonds, and even life insurance policies. Additionally, while the exemption thresholds are historically high, they are set to sunset (or decrease) soon. Under current law, the exemption threshold will decrease to about $6.2 million per person on January 1, 2026, unless Congress intervenes. Depending on who controls the federal government, the exemption amount might be further lowered.

The other side of the unified tax credit is the gift tax, which applies to gifts made during a person's lifetime. Every dollar gifted during your lifetime (beyond an Annual Exclusion) reduces your remaining exemption. The Annual Exclusion is currently $17,000 per person per year (or $34,000 per couple per person per year).

Once you give above these thresholds in a given year, the amount given counts against your lifetime exemption, and you must file a gift tax return to keep a record. Like the estate tax, the gift tax exemption will be cut roughly in half in 2026 without Congressional intervention. These estate and gift tax exemptions - the unified credit - effectively allow everyone to give up to the exemption threshold in life and death.

PLANNING OPTION—PREPARE A WILL

With tax consequences in mind, there are two primary planning strategies to consider. The first is to transfer your forestland via testamentary planning - drafting a last will and testament.

If your estate is unlikely to surpass even a lowered estate tax threshold, this strategy might be a good option for your family in many respects. There is simplicity in leaving property via a will; it is relatively easy, and you do not have to change anything about how you own or use the property while living.

Additionally, whenever the property passes to your beneficiaries, they take it with what is called a "stepped-up basis," meaning that, for tax purposes, they will only recognize gains upon subsequent resale of the property, relative to what it was worth when they inherited it, rather than what it cost you. While this might be a good option for many, be mindful that the exemption thresholds are always subject to change, and your estate could likewise become taxable between now and the time you pass away.

PLANNING OPTION - LIFETIME GIFTING

Alternatively, if you have a taxable estate (i.e., assets worth more than the applicable exemption thresholds) - or if you suspect that you might eventually - giving the land to the successor of your choice during your lifetime might be a better approach.

When you give property away, it is no longer considered a part of your taxable estate. Likewise, gifting forestland to a loved one removes both the land and its appreciation from your estate, minimizing potential estate tax liability.

This is also practical option if you have family members interested in continuing the ownership and care of your forestland and are ready to begin doing so now. Be mindful, however, that when you give land away, you relinquish ownership, so you must weigh the loss of revenue against the tax benefits of gifting.

"MANY LANDOWNERS MISTAKENLY BELIEVE THAT THEIR PROPERTY INSURANCE PROVIDES SUFFICIENT PROTECTION FROM THESE RISKS. STILL, THEIR POLICIES MAY HAVE COVERAGE EXCLUSIONS OR CAPS, WHICH WILL LAY LIABILITY AT THE FEET OF THE PROPERTY OWNER IF EXCEEDED. HOLDING LAND IN AN LLC HELPS FILL IN THESE GAPS."

Additionally, a gift of forestland will likely exceed the gift tax Annual Exclusion, meaning you will have to file a gift tax return after giving (though the tax will not be due unless you have exhausted your exemption). The value of the land given ultimately counts against your lifetime exemption amount.

[YOUR FAMILY FOREST], LLC

No matter the planning route, an excellent first step to preserving your forestland is to form a limited liability company ("LLC") to hold the property. Owning real property in an LLC rather than in your individual capacity provides numerous benefits. It protects against personal liability - both from accidents on your property and as a shield against claims on you individually. Many landowners mistakenly believe that their property insurance provides sufficient protection from these risks. Still, their policies may have coverage exclusions or caps, which will lay liability at the feet of the property owner if exceeded. Holding land in an LLC helps fill in these gaps.

Owning property in an LLC also provides tax benefits. Among these is the LLC's permissibility of "pass-through" taxation. This means that any income your property generates over the year will "pass through" to you as an individual, and you will simply report it on your personal tax return.

This avoids the "double tax" issue with income generated by a traditional corporation. Additionally, by holding land in an LLC, you can claim costs associated with the property as deductions on your individual income taxes. These deductible expenses include mortgage interest, insurance costs, payments to a property manager, and any legal or professional services required to maintain the property.

WHAT NOW?

There are many possibilities for preserving your forestland for future generations, but now is the time to start planning. Talk with your family about your plans; involving them in this process can help ease tensions and clarify goals. Once you have your family goals aligned, include professionals. Succession planning is sophisticated and involves experienced lawyers, accountants, and other financial professionals.

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