Inter-Generational Land Transfer
Or, How to Keep the Family Forest in the Family
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Your Land, Your Legacy
Estate Planning Tools:
Wills, Trusts, and Business Entities

How is Land Owned?

- Fee Simple: a bundle of rights
- Partition: the right to force sale of land to liquidate ownership interest
- How is land transferred upon death?
- Group ownership:
  - Tenancy in Common: undivided interests
  - Joint Tenancy: right of survivorship

Intestacy

- A person who dies without a will is said to be “intestate.” To transfer ownership of land, a Court must be asked to determine the rightful heir in a proceeding called “Probate.”
- Uniform Probate Code governs order of inheritance: first to surviving spouse, then to any surviving children, or parents, or siblings, or cousins, etc. If no surviving heirs at law, then property “escheats” to the State.
Wills
A will tells a Probate Court how to distribute your assets.
Probate can be formal, requiring Court supervision, or informal, requiring only administrative procedures.
A will can be contested; then, a judge will decide the outcome based on principles of law and equity.

Trusts
A trust is a contract that owns property. If it owns all of a person’s property, probate may not be necessary.
The contract is between the grantor and the trustee, who owns the grantor’s property for the grantor until death, and then distributes the trust property to the beneficiaries.
Trusts can be revocable or irrevocable. A revocable trust is often called a “Living Trust”; the grantor may change or revoke the trust during her lifetime.

Business Entities
- Corporations, Partnerships, and Limited Liability Companies are formed to enable groups of people to own property, conduct business, and pay taxes.
- The business entity separates the individual owners from the business for liability protection.
- Business entities enjoy favorable tax rates and can be immortal. ‘Trusts’ income is taxed at a higher rate. They usually are best used for distributing assets, but not for holding it indefinitely.

Family LLCs
- A Family Limited Liability Company or Family Limited Liability Partnership (FLLC or FLLP) can be formed by landowners to own land and agree to rules about ownership and stewardship.
- Members can write rules limiting eligibility of ownership to lineal heirs and giving up right to partition.
- Members can give Company membership units to their heirs and involve them in land stewardship during their lifetime.
The Member Control Agreement

- “Rules of the Road” that all members agree to abide
- You can:
  - Restrict membership to Eligible Heirs
  - Require spouses to sign valid waiver of marital interest, but still employ and compensate them
  - Discourage buyouts by restricting compensable value to a percentage of FMV and/or set a time period for payment
  - Adopt a Land Stewardship Plan
  - Assign unique duties to members and spouses, like Cabin Coordinator, Bookkeeper, or Naturalist

What else can a FLLC do?

- Own life insurance policies to fund buyouts
- Buy health insurance, long-term care insurance, or set up other benefit plans for members
- Buy, sell, and lease other property
- Rent out the cabins on VRBO or AirBNB
- Establish its own social networking presence
- Anything any other business can do

Should you form a FLLC?

Pros:
- Avoids probate of land and possibility of partition
- Creates legacy of land stewardship principles
- Encourages peaceful co-ownership among heirs
- Can be organized to minimize estate tax burden

Cons:
- Cost of retaining an attorney
- Disagreement among family members about future of property
- Difficulty funding expected buyouts
- Paperwork, formalities, and annual meetings

How to form a FLLC

1. Meeting of founders to elect officers, adopt Articles of Organization, Bylaws, and Member Control Agreement
2. File Articles with the Secretary of State
3. Get Federal EIN
4. If Company will generate revenue, open a bank account
5. Have property appraised by qualified neutral professional
6. Transfer property from individual(s) to FLLC
Form a FLLC, cont.

- Record transfer and value of land in Member Control Agreement (Capital Accounts)
- Issue Membership Certificates (if used) to founding Members
- Remember to renew registration of business entity with Secretary of State each year
- Gift up to $14,000 pp in membership units to Eligible Heirs (Federal gift tax exemption)*

Working the land

means more than minding the trees.
Is it worth the effort? You decide.