Section Two:
Evaluating Your Farm Resources

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 perhaps - 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.

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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 sensitive 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). Indeed, many estate plans create a trusteeship over property in one of the heirs, a position of great responsibility.

Where families are looking to gradually transfer a business between generations, an assessment should be made of both generations' abilities, to look for complementing 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 family members will be able

to devote to the enterprise, particularly if working an off-farm job, and is there an affordable 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 - how will you meet like-minded 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. Commercial food production has always 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. Additionally, there may be developing distribution enterprises in the area in which the farm might participate.

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?

The 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.

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 Theodore A. Feitshans, J.D., *et al*, and published by North Carolina Cooperative Extension Service. It has been edited to comply with the laws of Virginia.

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 and any co-owner 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, a properly executed deed describing the property must be recorded by the Clerk of Court in the county or city 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 may be 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 normally determines the ownership rights of each owner, though a business entity structure such as a limited liability company can alter these rights by contract.

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 intestate laws of your state.

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.

- Fee title to the land itself may not be sold unless the life tenant and all the remaindermen join in the sale (though a remainderman may sell his or her interest subject to the life estate). 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. Have your attorney or tax adviser explain the tax consequences of conveying a life estate, particularly if you plan to convey a life estate to your spouse.

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 Virginia may take three forms: tenancy in common, joint tenancy with a right of survivorship, or tenancy by the entireties. 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 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.*

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 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 entire 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, raising 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 any state 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.*

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, Virginia 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 common law 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 Virginia, 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 generally 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.

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 2.1

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 Municipal government support of agriculture			
Community support of agriculture			
Local Farmers Market			
Urban pressure			
County economic development			
Agricultural and Forestal Districts			
Land Use Value Assesssment			
Availability of health services			
Timber Markets			

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)				
Timberland (L.1)				
Merchantable Timber (L.2)				
Pre-Merchantable Timber (L.3)				
Other fixed assets			Total Fixed Liabilities	
Total Fixed Assets				
a. Total Farm Assets			b. Total Farm Liabilities	
			Current Assets (market) / Current Liabilities = _____ Ratio	
c. Farm Net Worth (a - b)				
			Current Assets (market) / Current Liabilities = _____ 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
			Total	

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 L.1: Timberland						
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	

Schedule L.2: Marketable Timber						
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	

Schedule L.3: Premarketable Timber						
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	Comments
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: