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Ties to the Land: Succession versus Estate Planning

By Clint Bentz

Nothing motivates us to action like witnessing the painful mistakes of our neighbors. In our **Ties to the Land**™ seminars we discuss the important difference between succession planning and estate planning. We define Succession Planning as preparing your property and your family for a change in ownership and leadership. Estate planning is the process of understanding and using the set of legal tools that are available to make sure your Succession Plan happens the way you want it to happen. Talking about the tools before you have the plan is like packing your bags before you decide what kind of trip you want to take. Many families make this mistake and have spent large sums on elaborate estate planning documents without having ever stepped back and asked what they wanted to accomplish in the first place.

The saddest stories, however, are from those families who know what they wanted to do, but didn't get their estate planning documents in order. I recently heard such a story. Dad owned a large ranch here in the West that had both cattle and timber as the main sources of value and income. This ranch had been owned by the family for over 100 years. Dad's daughter, his only child, had her own herd of cattle that she ran on the ranch. She was very involved in the operation of the ranch and it was an important part of her heritage and identity. Her son, Dad's grandson, was also building up his own herd of cattle on the ranch and was also involved in the day-to-day operations of the ranch.

Dad's wife had died several years earlier and he had remarried. While he talked many times with his daughter and grandson about his plans for the ranch and his intention that they continue to own and manage it after his death, as with many farm couples, his will left everything to his wife. When Dad died last year, the new spouse inherited the property. Well, you can guess what happened next. The spouse promptly sold the property. To make matters worse, after the sale closed the woman who bought the property called her husband on her cell phone to tell him excitedly that he would never guess what she just bought him for his birthday... This property, which had been a working cattle ranch for over 100 years, had been reduced to a trinket for a wealthy couple.

Imagine the sense of loss and grief for this family. Not only had they lost their father and grandfather, but now they had lost their heritage, their identity, and the wealth that had been

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accumulating in this family for over 100 years. The spouse has no intention of sharing the money from the sale with her step daughter, and she has no legal responsibility to do so. Not

having any other place to run their cattle, the daughter and grandson sold their herds and had to turn to another line of work to support themselves.

This is not the result that Dad envisioned for his children or for his property. He had already done the hard work of successfully passing on his passion and vision for the ranch. His daughter and grandson had bought into this vision both emotionally and economically. However, like many of his generation, he did not seek the services of a competent accountant and attorney to help him ensure that his plan for the ranch and his family actually took place. Are you in this category? If so, you are not alone. According to a new survey just released by findlaw.com, fifty-eight percent of Americans have not written a will, giving them little control or input into issues such as what will happen to their assets and any minor children when they die.

A will is a basic component of estate planning. Among other things, it specifies how your assets will be distributed when you die, and who will receive them. Without a will, the laws of the state in which you reside, and the laws of any state in which you own property, will determine how your estate is distributed.

Other components of estate planning may include a living trust, a medical power of attorney for end-of-life health care decisions, life insurance trusts, family limited partnerships, limited liability companies, charitable trusts, and the like. While all of this can be very confusing, think of these things as tools in a toolbox. You only pull out those tools that are necessary to fix the problem. Just like a competent mechanic, a competent, experienced estate planning professional can help you to understand which tools you need to use to make sure your succession plan happens the way you want it to happen.

There are ultimately only five things that you can do with your property. You or your heirs can sell the property to someone else; you can give part (e.g. through conservation easements) or all of it away to charity; you can break it up and divide it among your children; you can give it intact to one child, or you can give undivided interests in the property to your children. There are benefits and risks to each of these actions which need to be thought through carefully so that you don't have any unintended consequences.



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Succession will happen. At some point in the future, your property will pass into the hands of someone else. The real question is: have you done anything to preserve the lifetime of work and passion you have invested in your property when this transition ultimately occurs? Is the next generation of leadership groomed and prepared to care for this property? Do they have both the love for the property and the technical skills they will need to be successful land

managers? Have you provided an appropriate legal and financial framework that will help them to be successful?

There are many resources available to help you. Our website, www.tiestotheand.org, is one of them. Other great websites include the national timber tax website, www.timbertax.org, and the forest service estate planning website at www.na.fs.fed.us/stewardship/estate/estate.shtml.

Don't become a statistic. Get some help to start your succession and estate planning today!

Clint Bentz is a CPA living in Oregon with his wife and six children. His practice is centered on helping family forest landowners deal with intergenerational succession issues. He is the principal author of "Ties to the Land: Your Family Forest Heritage." Clint's family was recognized as the 2002 National Outstanding Tree Farmers of the Year. Clint is the past chairman of the National Operating Committee of the American Tree Farm System, and is a trustee of the American Forest Foundation. He welcomes your comments and questions at cbentz@bcslc.com or (503) 769-2186.