# Planning Your Estate

## Part 1
Where to Begin

Most people avoid estate planning because the term sometimes evokes unpleasant thoughts. To some, estate planning conjures up images of people in their twilight years, preparing for the distribution of property after death.

Others neglect or postpone estate planning with excuses such as, "I'm too young," "It's too expensive," "I'm in excellent health," or "I don't have time." Many people are so concerned with living that they do not give any thought to the consequences of dying.

Many people believe estate planning is only for those with a million or more dollars or those who own big businesses or thousands of acres of land. "I don't have enough money or property to worry about," they say. Estate taxes are not just for the wealthy – many individuals with farm or forestland find themselves subject to estate taxation. Remember that the value of your estate is not what it cost you to acquire it, but its current market value.

Even with the recent changes in the tax laws, the estate tax has been eliminated for only 1 year – 2010 – then the estate tax reverts to a 55 percent tax rate, with a $1 million exemption after 2011. In other words, after 2011, your estate must pay a tax of 55 percent on all property worth more than $1 million. Many people are surprised to learn that their estate can be worth more than $1million. With the increased values of farmland, forestland, and homes, however, it is not uncommon.

Most likely, the real reason for avoiding planning your estate concerns your emotional feelings about death and your attitudes about property ownership, business arrangements, marriage, and family relationships. Accept the fact that you are going to die someday. What if you should die without being prepared? What will happen to the property you worked so hard to acquire, improve, and manage?

Ask yourself, "If I should die before I wake..."

- What would happen to the property I've worked a lifetime to acquire?
- Would my spouse and children be provided for in a fair way?
- Would my spouse have adequate control of business and family affairs?
- Would the estate settlement be conducted by someone with my family's interests and needs in mind?
- Would my estate be taxed at the lowest possible level?
- Would my heirs have to sell the farm or forestland to pay the estate taxes?

# What Is Estate Planning?

Estate planning is the process of arranging your affairs to meet your wishes regarding the use, conservation, and disposal of your property to best provide for and protect you and your heirs. It involves coordinating your properties (farmland, forestland, timber, stocks, bonds, cash, social security, life insurance, business ownership, and real estate) into a total program.

You can't take these "riches" with you. Someone is going to inherit your property, so it seems sensible to have the results of your hard-earned efforts distributed according to your wishes. Most people do not have the time to learn how to do a thorough job of planning the distribution of an estate and staying updated on the changes in state and federal laws to keep a plan current.

# The Estate Planning Team

Work with professionals – attorneys, accountants, financial advisors, trust officers, life insurance underwriters, real estate appraisers, and consultant foresters – to design and implement a plan that will achieve your goals.

An attorney, who usually serves as the key person on the team, provides legal advice, draws up legal instruments, and coordinates the work of the other team members.

The accountant and financial advisor provide estate analysis, investment advice, information on the client's businesses, and tax counseling.

Trust officers help you decide if a trust is necessary. They also provide financial advice and trust information, and they suggest other competent estate planning professionals.

Life insurance agents can analyze the estate owner's insurance policies and plans. Many life insurance agents, especially Chartered Life Underwriters (C.L.U.), have special training in estate planning. They can analyze the estate's creation, protection, liquidity, and business needs with respect to life insurance.

Real estate appraisers can evaluate your property to determine the value it will contribute to your estate. If you have farm or timber property, work with an appraiser who is qualified as a rural land appraiser. Not all appraisers are qualified to appraise the volumes and values of timber.

Consultant foresters can estimate the value of your timber and project growth over time so you can determine the amount it will contribute to your estate. Some consultant foresters are also qualified rural real estate appraisers.

Visit with one or more professional estate advisors to learn about the tools of estate planning: wills, gifts, insurance, trusts, and annuities.

Don't let legal terms used by the professionals confuse you. Don't hesitate to ask questions or take notes during your sessions with these advisors. You may want to tape your conversations (with permission, of course) for later reference, particularly if your spouse is unable to be present.

## Language of Estate Planning

A knowledge of term definitions used in estate planning may help you communicate with professionals. Some terms used by professionals and in publications may be unfamiliar. A glossary of terms is at the end of this publication. You may want to review it before reading further. You might also want to obtain a copy of Extension Publication 1762 *Legal Terms and Concepts for Forest Land Owners* from your local Extension office.

## Process of Planning

This publication explores six steps for planning your estate:

1. Initiate the discussion.
2. Choose professional advisors.
3. Take stock of the present.
4. Develop objectives.
5. Consider alternatives.
6. Review and modify.

### 1 Initiate the discussion.

Perhaps the greatest hurdle for most families is lack of communication. All too often family members hesitate to discuss estate planning. Parents considering retirement may wish to delay discussion because of the unpleasant overtones associated with growing old and dying.

Younger family members may hesitate to mention estate planning because they want to avoid placing additional stress on their parents or grandparents and because they do not wish their motives to be misinterpreted. If an heir mentions estate planning, some family members may assume the heir is greedy and wants to take over.

Communication can be a problem. How do family members initiate a discussion about the need for an estate plan without causing a hassle? One way is to use this and other publications as a conversation piece. Share what you learn with other family members. Encourage them to read this publication. An excellent publication for forest landowners is USDA Southern Forest Experiment Station Ge. Tech. Report SO-97 *Estate Planning for Forest Landowners – What Will Become of Your Timberland?* You can request a copy from your local Extension office.

Other resources to stimulate conversation include books and articles in newspapers, magazines, and specialty publications from banks or trust companies. These may serve as the basis for a discussion of your particular problems and may illustrate the consequences of a failure to plan.

Encouraging family members to attend estate-planning seminars is another way to start discussions about the benefits of planning.

Do you know someone who works in law, banking, accounting, or insurance? A visit with this individual may lead to a discussion of estate matters in a casual way and serve to initiate action.

It is tragic but true that often the death of a neighbor, friend, or relative encourages family members to realize that estate planning is not a subject to be overlooked.

Once a discussion is initiated, you may want to read further to learn about the different tools of estate planning – how they are used and under what circumstances. Have a discussion with some of the advisors mentioned previously. Don't be put off by family members who are not yet ready. They may never be. **Later may be too late.**

## 2 Choose professional advisor(s).

Because you are dealing with a subject that involves a highly technical practice, it is strongly recommended you leave the design of your plan to professional advisors. If you have timberland, make sure your advisor is familiar with the tax and estate implications of timbered property. You have the final say, however. Ask questions. Insist on understanding the plan and its implications.

## 3 Take stock of the present.

Make a critical review of your present financial situation. This step is crucial because it is the foundation of your entire estate plan. The end result is satisfactory only if the information obtained is complete. When starting your estate plan, you can save time and money if you have the necessary information in hand for that first visit to your attorney. Below is a checklist of information your attorney needs to know.

Have the following information available:

- ☐ Family members who will be involved in the estate. List their names, birth dates, addresses, occupations, and social security numbers.
- ☐ All bank accounts. Include the names and locations of the banks, names on the accounts, and account numbers.
- ☐ Stocks, bonds, and mutual funds you own. Include the names, years of purchase, exact names of owners, face value, and cost.
- ☐ Life insurance policies you own. List each company and policy number; whether it is double indemnity; the amount owned by the husband, wife, or jointly; the exact name of the owner, the insured, and the beneficiaries.
- ☐ All trusts including the type of trust, its location, the trustee, who established it, the exact name of the beneficiary, the value, and the owner.
- ☐ All financial notes, mortgages, and accounts receivable. List a description, the year it was acquired, the value, and the persons who owe you.
- ☐ All the real estate you own including the type of property and the number of acres, the location, the year it was acquired, the cost, all the owners, and the market value.
- ☐ A copy of your timber accounts including the current market value, the basis, and your management plans. See Extension Publication 2307 *Timber Tax Overview* for a discussion on your accounts and basis.
- ☐ All of your major personal property such as livestock, motor vehicles, machinery, crop inventory, home furnishings, jewelry, art, antiques, and personal items. Describe the cost and the value and who owns what.
- ☐ All the debts you owe or any liens against your property. Include any mortgages, the names of creditors, due dates, and remaining amounts due from husband, wife, or jointly.
- ☐ All mortgages and other real estate debts. Include a description, names of creditors, dates due, amounts remaining to be paid by the husband, wife, or jointly; and whether the mortgages and debts are insured.
- ☐ All other personal liabilities such as unsecured notes; insurance loans; endorsed notes; real estate taxes; personal property taxes; state income taxes; federal taxes (including income and gifts); unsettled claims; names of creditors; due dates; amounts remaining to be paid by husband, wife, or jointly; and which debts are insured by credit life insurance.
- ☐ Your anticipated and current retirement benefits from pensions, profit sharing, deferred compensation, and social security. Include the expected annual benefits for husband and wife, the amount invested, and death benefits.
- ☐ Other financial information such as last year's income, current income, salary, annuities, rents, interest, bonuses, dividends, trusts, capital gains, and so on.
- ☐ Location of your special papers. Include the husband's and wife's wills, deeds, insurance policies, stock and bonds, financial statements, income tax returns for last 5 years, gift tax returns, contracts, partnership and corporation agreements, profit sharing plan, divorce decrees, prenuptial and postnuptial agreements, employment contracts, pension benefits, timber cruises, and basis information.

A competent professional estate planner will want to review every document that bears on the estate owner's personal and business situations to avoid "surprises" later on. For example, a title to property held in a different way than you thought might have a dramatic effect on the final plan. Another example is the need for current timber values – these amounts count toward your total estate value. If you forget to include the standing timber values, you may have unanticipated estate taxes.

Because your professional estate planner needs the information on the checklist, save valuable time and money by having it compiled before your appointment.

## 4 Develop objectives.

As you begin forming an estate plan, establish goals for your estate. What do you want to accomplish? Objectives vary from family to family because of the differences in assets, the number of children, the abilities and ages of survivors, and the values that are important to the person making the estate plan. Consider the individual objectives of each family member as well as the overall family objectives. If there is conflict among the objectives, rank them in the order of importance. Some of the more common objectives follow in abbreviated form. Check those that apply to your situation, and list any you wish to add.

Objectives for planning an estate
Provide security for a surviving spouse.

- ☐ Relieve surviving spouse of management responsibilities.
- ☐ Provide security for both spouses after retirement.
- ☐ Retire at age _____.
- ☐ Provide security for a disabled or incompetent heir.
- ☐ Keep a business in the family.
- ☐ Provide educational opportunities for heirs.
- ☐ Assist heirs to get started in businesses.
- ☐ Minimize estate taxes.
- ☐ Nominate guardians, conservators, or trustees for minor children.
- ☐ Nominate executor(s) of estate(s).
- ☐ Provide a means of paying the expenses of estate settlement, taxes, and other debts.
- ☐ Provide for equitable (not necessarily equal) treatment of heirs.
- ☐ Transfer specific property to specific heirs.
- ☐ Make gifts to heirs and others during lifetime.
- ☐ Reduce income taxes through disposing of income property during lifetime.
- ☐ Provide a scholarship at a favorite university.
- ☐ Provide for a favorite charity or organization.
- ☐ Prevent property from going to nondeserving heirs.
- ☐ Take full advantage of the marital deduction.
- ☐ Assure continuity of a farm or other business.
- ☐ Review current operation and ownership of a farm or other business.
- ☐ Other____________________.

## 5 Consider alternatives.

Your objectives may include several options for achieving them. Ask your professional estate advisors to illustrate the alternatives. Explore the consequences of each one. Decide whom you want to receive what, when, and how.

You may need a sounding board – someone to talk things over with, to try ideas on, to get reactions from. This may be your spouse, a friend, a partner, or one of your professional advisors. The sounding-board function helps you explore the needs of your beneficiaries, your assets, and their value to your family; the proper balance between providing for your own future and for your family's future; and the direction or objectives of your estate planning.

## 6 Review and modify.

Once you have completed your estate plan, you can relax – but only for a little while. We live in a world of continuous change, so your plan should change with your circumstances. The value or nature of your property may change. Recipients may marry or divorce, die, or have children. Estate taxation laws have been changed, and they will probably be modified again within the next few years. It is vital that your estate plan takes these changes into account and that it is revised when changes occur.

Some professional advisors suggest a review of an estate plan every 3 to 5 years, or whenever there is a major change in a situation.

# What Can a Good Plan Do?

A good estate plan can help provide financial security for you and for your family members, now and in the future. A properly designed plan may save thousands of dollars in death or estate taxes and estate settlement costs.

A well-thought-out estate plan can protect your family from bitter quarrels by providing for contingencies. It can avoid the forced sale or disposition of a farm or a family business to pay estate taxes. It can provide for skillful property management for younger family members and for older family members who can no longer care for their own financial affairs.

No one will force you to make an estate plan. You may do nothing. Not making an estate plan is, in fact, making one, but it may not be one that you would like. If you do nothing, then at your death, the state laws take over. Your property will pass to the persons and in the proportions prescribed by Mississippi law. If the state cannot determine your heirs, the property will pass to the state. Without a will specifying otherwise, your spouse will have to share the property equally with all of your children.

# Review

**If you have <u>not</u> begun estate planning:**

- ◻ Consider what would happen to your family property ("If I should die before I wake...").
- ◻ Do you feel an estate plan is necessary for your situation? If not, why?
- ◻ What excuse have you used most often for not planning your estate?
- ◻ Have you known someone who died without planning his or her estate? What happened to the family and property?

**If you ¡are <u>ready</u> to begin estate planning:**

- ◻ How will you start a discussion in your family about estate planning?
- ◻ What professionals do you need to consult?
- ◻ What stage are you in the estate planning process? At what stage are other family members?

**If you have <u>begun</u> estate planning:**

- ◻ Did you discuss your objectives with family members? Did they offer suggestions?
- ◻ What professionals did you consult? Which ones were most helpful?
- ◻ Did you provide your professional advisors with all relevant information?

# Glossary

**Administrator, administratrix** – the person or institution appointed by a court to perform the function of an executor when none has been named or when the person named in the will as executor is unable or unwilling to serve.

**Annual exclusion** – the $11,000 amount that can be given per year to any individual or any number of individuals as a tax-free gift. A husband and wife together can give $22,000 to each person.

**Annuity** – periodic payment of a definite sum of money with such payments to continue for life or for a definite number of years.

**Assets** – all types of property that can be made available for the payment of debts; all a person owns.

**Attorney** – a person trained, qualified, and authorized to practice law.

**Beneficiary** – a person or institution who derives benefit from the creation of a trust, the proceeds of an insurance policy, or the property designated by a will.

**Bequest** – a transfer of personal property by a will.

**Codicil** – a supplement, an amendment, or an addition to a will; executed with all the formalities of the will itself; may explain, modify, add to, subtract from, qualify, alter, or revoke provisions in a will.

**Common disaster clause** – a statement in a will telling how property is to be distributed if would-be devisees die from the same accident.

**Conservator** – one who is appointed by a court to manage the estate of a protected person, who because of age, intellect, or health is incapable of managing his own affairs.

**Death taxes** – the taxes due by reason of the death of an individual. Usually known as the estate tax.

**Deed** – a written document that transfers an interest in real property.

**Decedent** – a deceased person.

**Devise** – to transfer real property.

**Devisee** – a person to whom real property is transferred by a will.

**Domicile** – the permanent place of residence for tax purposes.

**Escheat** – when a decedent's property goes to the state because of a lack of heirs and there is no will.

**Estate** – the real (lands, timber, buildings, and legal interest in land) and personal property (automobiles, clothing, money, and all movables) that a person owns.

**Estate tax** – a tax levied against the estate of a deceased person.

**Executor, executrix** – the person(s) and/or institution named in a will to pay the debts, manage the property, and later distribute it according to the provisions of the will.

**Fiduciary** – a person, such as an executor, guardian, or trustee, who must always act for the primary benefit of those committed to his guidance.

**Guardian** – a person legally empowered and charged with the duty of taking care of another person who because of age, intellect, or health is incapable of managing his own affairs. A guardian manages the person. A conservator manages the property of a minor or an incapacitated person. One can be appointed as a guardian and as a conservator.

**Heir** – one who inherits either real or personal property.

**Holographic will** – a will in which the signature and material provisions are in the handwriting of the testator and which need not be witnessed.

**Intestate** – a person who dies without making a will.

**Legatee** – a person who receives personal property by a will.

**Lineal descent** – being in a direct line of ancestry, such as a son, a daughter, or a grandchild.

**Marital deduction** – a tax provision allowing one spouse to transfer property to the other without being subject to the estate or gift tax.

**Probate** – verification of the court that the will of the deceased testator is valid and is the last will.

**Sole ownership** – property that is titled in only one name.

**Succession law** – governs the disposition of one's estate if there is no will.

**Tenancy in common** – a type of co-ownership that can exist between two or more persons. When one dies, his share becomes part of his estate. Property goes to his heirs and not to the other tenants in common unless they are also his heirs or, if there is a will, to his devisees.

**Testator** – one who makes a will.

**Trust** – contract by which a person places some or all of his property under the control of a trustee, who manages it for the benefit of a third person or a group of persons designated by the grantor.

**Unified credit** – credit against gift or estate taxes due. The unified credit in 2003 is $229,800, which reduces the tax on $700,000. The credit increases to $345,800 after 2005, eliminating the tax on up to $1 million.

**Will** – a written document in which a person specifies how to distribute his property and possessions after his death. A valid will must comply with the law of the state in which he had his domicile. (If a person is in his last illness and announces his intentions in the presence of two or more witnesses, the will may be oral, or "nuncupative.")

**Witness** – one who sees the testator sign his name on his will or hears him declare it to be his will and, at the request of the testator, signs his name and address at the end of the will.

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Material in this publication was adapted from the following:

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This publication is not designed as a substitute for legal advice. Rather, it is designed to help families become better acquainted with some of the devices used in planning an estate and to create an awareness of the need for such planning. Future changes in laws cannot be predicted, and statements in this publication are based solely on the laws in force on the date of printing.

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