



## STEP 6: **Understanding Legal Strategies**

Once you've identified your goals, gathered the essential documents, and discussed your plans with your family and others, it's time to explore your legal options for a succession plan. A variety of tools and strategies can help you reach your goals; the best one depends on your unique situation. In this step we provide a broad overview of options. This is not meant to be considered legal advice — be sure to consult a professional about the right approach for you.

We return at this point to the three key questions that were posed in the Introduction:

- Do you wish to influence who will own your land in the future?
- Do you want to influence how your land will be used in the future?
- How will you, your family, and any others who need to be involved make decisions about the future of your woodlands?

These questions connect to three main areas: ownership, management (or stewardship), and decision-making. Answering them will help you choose the





estate planning tools that align with your personal and financial objectives, often in consultation with a carefully chosen estate planning professional.

If you want to determine who will own your land after you pass it on, or to influence the future management of your land, there are estate planning tools to help you formalize your wishes. If you haven't identified who will own your land, you can still achieve your land protection goals using the mechanisms that are outlined in Part D.

## A. Using a Will to Determine Who Will Own the Land

A will, the most commonly used estate planning tool, is a legally binding document that states how you want your assets distributed once you have passed away. Your will specifies how assets "owned in your individual name" will be distributed after your passing, and who will receive them.

If you die with only a will, or no will at all, your estate will go through probate, the legal process that wraps up a person's legal and financial affairs after their death. Probate determines the validity of your will. If it's deemed valid, the probate process then proceeds to the distribution of assets according to your will, after paying any outstanding debts and tax liabilities. The probate process is public, and it can take anywhere from a few months to more than a year (or a lot longer, if one or more of the heirs contests the will). If you want privacy, you may want to consider one of the strategies outlined in this chapter.

A will is simple and inexpensive, but it can't meet every estate planning need — in fact, in Vermont a will does not necessarily guarantee that your wishes will be granted. For your will to be effective at passing your land the way you want, you need first to ensure that the way you own your land permits you to pass it on that way. Second, your will must be written in a way that ensures it will achieve your goals. Obtaining sound legal advice when drafting a will and estate plan is essential to avoid needless complications.

Here are some considerations for developing a will that distributes your land assets in ways that meet your goals. These suggestions are not meant to replace the advice of an estate planning professional, but to help guide your conversations with one:

### 1. Describe the Current Owners

If you own only a partial interest in the land, or if you want to make a provision for how the land will pass after you have been the last survivor of joint owners, it is helpful to state your ownership interest in your will.

## Sharing Your Goals in a Legacy Letter

Some landowners decide to share their hopes and goals for the future of their land through a legacy letter, which can be attached to your will to provide additional information.

Written to your beneficiaries, a legacy letter shares your knowledge, beliefs, values, and hopes. It can carry moral weight, but it is not a formal legal document and it's not legally binding. It can, however, be very helpful to your beneficiaries in clarifying your wishes, providing guidance to their future decisions about the land.

Consider including in a legacy letter:

- The history of the land, including the story of how you came to own it.
- The land's ecological, historical, and/or cultural value.
- Your favorite memories of the land.
- Aspects of it that you most enjoy.
- Work you have accomplished on it.
- Your hopes for what will happen to the land.

Don't worry if you're not a good writer — this isn't an English paper! Just describe in your own words what you value about the land, and what you hope your legacy on it will be.







## 2. Identify Your Beneficiaries

Your will should include the names of the individuals (spouse, children, siblings) or organizations (land trust, state conservation agency, town) to which you would like to give your land. Clearly define who or what your heirs are, and what you want them to receive.

If you are interested in giving your land to a land trust, state conservation agency, or town, it's very important to meet with the organization and discuss your intentions. Though you might think any organization would jump at the chance to own your land, some organizations have financial requirements for accepting land, or would rather sell your land and put the proceeds toward their mission. So be sure to have in-depth conversations with any potential recipient.

Donating your land would qualify as a charitable gift, and may provide your estate with potential tax benefits. To fully understand the tax implications of such a donation, consult a tax attorney or certified public accountant with expertise in land conservation.

## 3. Avoid Conditions in Your Will

It is not advisable to set up conditions for the ownership of the land, such as "My daughter can have the land as long as she doesn't build houses on it." Conditions can be difficult to both interpret and enforce, and as a result may not ensure the outcome you want. Also, a will is intended only to transfer your assets according to your wishes, so its life span is meant to be limited.

## 4. Consider Additional Options

A will is part of the package of planning, and only applies to assets that are subject to probate. There are other tools available, such as trusts, to determine future ownership of many of your assets — and these may be both less expensive and more direct at transferring your assets. If you want privacy and want to avoid probate, you may consider creating a trust or other ownership structure.

## B. Configuring Land Ownership to Determine Future Owners

A great starting point for conservation-based estate planning is reviewing your deed. Your deed specifies your current form of ownership, and understanding its implications is key to planning. A town clerk, estate planning attorney, land trust, or forester can help you find your deed.

Without estate planning, the form of ownership listed on your deed will determine who will get your land when you pass away. If you want your family to continue owning the land, an estate planning attorney with land conservation experience can help you choose the form of legal ownership that determines who controls the land, how it is transferred, how it is taxed, and how liability will be shared, among other things.

There is a range of land ownership options, and understanding these will help you through the planning process. Describing your goals, or those of your family, to an estate planning attorney is a great way to sort out which form of ownership is the best fit. If you determine that a change of ownership is necessary and you are enrolled in the Use Value Appraisal Program, talk with your consulting forester to be sure the change aligns with the program.



The various forms of land ownership can be divided into two types, direct and indirect:

1. Direct Ownership

Direct ownerships are those in which a person or persons own the land directly, and their names are on the deed. These are the most common form of land ownership; they are easy to set up and maintain, and all forms of direct ownership can be combined with land conservation tools. However, they do not provide protection for liability, or a mechanism for the gradual transfer of land.

Here are some examples of direct ownership, with short descriptions of how land owned in these forms is passed on:

**One individual owner.** The owner’s name is listed on the deed. Upon the owner’s death, the land is transferred according to the terms of his or her will.

**Joint tenants with right of survivorship.** Two or more persons own the land, and the deed states that they own jointly or jointly with right of survivorship. Upon the death of an owner, the land automatically passes to the surviving owner or owners. This automatic transfer overrides directions in the will.

**Tenants by the entirety.** Ownership of the land is by spouses (and spouses only), and the deed states that they own as “tenants by the entirety.” Upon the death of a spouse, the land automatically passes to the surviving spouse. This automatic transfer overrides a will.



Direct Ownerships			
Ownership Type	Features	Pros	Cons
<b>One Individual Owner</b> (as shown on deed)	Upon death of individual owner, property passes according to will.	<ul style="list-style-type: none"><li>Simple, easy to set up in deed or will.</li></ul>	<ul style="list-style-type: none"><li>Property goes through probate.</li><li>No liability protection during owner’s life.</li></ul>
<b>Joint Tenant with Right of Survivorship</b> (two or more names on deed; the deed states this type of ownership)	Upon death of one owner, property automatically transfers to surviving joint owners.	<ul style="list-style-type: none"><li>Simple, easy to set up in deed or will.</li><li>No probate until death of last owner.</li><li>Overrides will.</li></ul>	<ul style="list-style-type: none"><li>Overrides will unless joint owner “breaks” joint tenancy during life.</li><li>No liability protection during owner’s life.</li></ul>
<b>Tenants by the Entirety</b> (only spouses’ names on deed; the deed states this type of ownership)	Ownership by two spouses, with right of survivorship. As with joint tenants, property automatically transfers to surviving spouse.	<ul style="list-style-type: none"><li>Simple, easy to set up in deed or will.</li><li>No probate until death of second spouse.</li><li>Cannot be “broken” by one spouse except upon divorce.</li><li>Overrides will.</li></ul>	<ul style="list-style-type: none"><li>Only available to spouse.</li><li>No liability protection during owner’s life.</li></ul>
<b>Tenants in Common</b> (two or more names on deed)	Default form of ownership for multiple owners, unless otherwise stated on deed.	<ul style="list-style-type: none"><li>Simple, easy to set up in deed or will.</li><li>At one owner’s death, that owner’s interest passes by will.</li><li>Owners may own different fractional interests.</li></ul>	<ul style="list-style-type: none"><li>It may surprise survivor that the owner’s interest passes by will.</li><li>No liability protection during owner’s life.</li></ul>





**Tenants in common.** Ownership of the land is by two or more persons, and it may be in specific shares. If a deed does not state that the persons listed own jointly or as tenants by the entirety, then they own as “tenants in common.” If one person dies, his or her share passes according to the terms of his or her will. This tends to create larger and more complicated ownerships, as each owner’s share gets passed on to multiple heirs, and making decisions about the land can become extremely difficult.

## **2. Indirect Ownership**

Indirect ownerships are those in which land is owned by a legal entity, rather than by a person. These can be more complex to set up, but they bring opportunities to protect individuals from liability, along with the ability to gradually change or transfer ownership, which can offer important tax benefits.

Here are some of the most common forms of indirect land ownership that families can use to achieve their goals:

### **Limited Partnership**

This is an organized entity for which income and loss go on the owners’ personal tax returns. Taxes and accounting for limited partnerships are relatively simple, but they do require annual reporting to the IRS. Ownership is transferred by interest instead of through a deed; but when one partner dies, the partnership usually terminates, unless the remaining partners agree to maintain it.

### **Trust**

There are many kinds of trusts, and many reasons for setting them up. In general, trusts operate in a top-down fashion in which the creator, usually the landowner, names a trustee who manages the assets, and must act as directed and in the best interests of the trust’s beneficiaries. The beneficiaries are those named in the trust who will be receiving assets from or otherwise benefit from the trust. The way in which the land will be transferred, the timing of the transfer, and how decisions will be made about the land can be written into the trust.

Common reasons for creating a trust include avoiding the cost and delays of probate, assigning a trustee to run your affairs if you are unable to do so, reducing or eliminating estate taxes, and keeping your estate private. Some states limit the number of years that a trust can stay viable — so



## Indirect Ownerships

Ownership Type	Features	Pros	Cons
<b>Limited Partnership</b>	<ul style="list-style-type: none"> <li>Formed by agreement.</li> <li>At least one general partner required. Others may be limited partners.</li> <li>Because property is owned by limited partnership, no change in deed at death. Instead, partnership interests transfer by will or lifetime gift.</li> <li>Limited partnership can exist forever. But when one partner dies, the partnership usually terminates, unless the remaining partners agree to maintain it. (See p. 30 on gift taxes.)</li> </ul>	<ul style="list-style-type: none"> <li>Ownership interest may be transferred without deed.</li> <li>Offers liability protection to limited partners.</li> <li>Spells out agreement between partners. Very flexible.</li> </ul>	<ul style="list-style-type: none"> <li>More complex than direct ownership.</li> <li>Annual reporting to IRS and state.</li> <li>General partner does not get liability protection.</li> <li>May be annual fee to state.</li> </ul>
<b>Trust</b>	<ul style="list-style-type: none"> <li>Formed by agreement created by donor, naming trustee and one or more beneficiaries.</li> <li>Because property is owned by trust, no change in deed at death.</li> <li>State law may limit length of trust's existence.</li> </ul>	<ul style="list-style-type: none"> <li>Trustee manages for benefit of beneficiaries.</li> <li>Usually offers liability protection to beneficiaries and trustee.</li> <li>Trust instrument spells out duties of trustee, and rights and benefits of beneficiaries.</li> <li>No annual fee.</li> </ul>	<ul style="list-style-type: none"> <li>More complex.</li> <li>Annual reporting to IRS and state.</li> <li>Income held in trust that is not passed out to beneficiaries will likely be taxed at higher rate.</li> </ul>
<b>Limited Liability Company (LLC)</b>	<ul style="list-style-type: none"> <li>Formed by agreement.</li> <li>Usually consists of members and one or more managers.</li> <li>Because property is owned by LLC, no change in deed at death. Instead, ownership interest usually transfers by will or lifetime gifts.</li> </ul>	<ul style="list-style-type: none"> <li>Ownership interest may be transferred without deed.</li> <li>Offers liability protection to all members.</li> <li>Operating agreement spells out agreement between members. Very flexible.</li> </ul>	<ul style="list-style-type: none"> <li>More complex.</li> <li>Annual reporting to IRS and state.</li> <li>Annual fee to state.</li> </ul>
<b>Enhanced Life Estate Deed (Lady Bird Deed)</b>	<ul style="list-style-type: none"> <li>Allows property owners to retain control during their lifetime, while ensuring a smooth transition of ownership after their death.</li> <li>Owner can live on the property, sell it, and change or revoke the deed at any time.</li> </ul>	<ul style="list-style-type: none"> <li>Property is automatically transferred to the named beneficiaries upon the owner's death.</li> <li>Protects assets from being used to pay for long-term care costs.</li> <li>Can provide tax benefits for the beneficiaries.</li> </ul>	<ul style="list-style-type: none"> <li>Property may be subject to a new tax assessment, resulting in higher property taxes.</li> <li>Limited scope of protection against grantor's creditors.</li> <li>May not be ideal if the owner wants to leave the property to more than one beneficiary.</li> </ul>





while trusts can offer a good option for families, they may not be a permanent solution. Trusts may be dissolvable by heirs.

Because the trustee has a responsibility to protect the financial value of the assets in the trust, and because permanent conservation may reduce the value of the land, it may be difficult to permanently conserve land in a trust. If permanent land conservation is a goal in the future, landowners should include that goal as part of the organizing principle of the trust.

### **Limited Liability Company (LLC)**

As the name suggests, limited liability companies protect all owners from liability. With this option, land ownership is transferred to the LLC, which is governed by a manager for the benefit of all members. An operating agreement is often used to outline the decision-making process and operating procedures that relate to how the LLC manages the land. Shares of ownership can be transferred between members by gift or by sale, as determined in the operating agreement.

An LLC can be used to move ownership gradually from one person to another, or between generations. This gradual transfer of ownership can help minimize taxes, and it provides a mechanism for accommodating the changing needs and life circumstances of members. There is an annual cost for maintaining an LLC.

Unlike trusts, LLCs can be maintained in perpetuity and amended by members over time, making them a strong choice to support a long-term strategy for land ownership and decision-making. Land owned as an LLC can also be put into permanent conservation.

### **Enhanced Life Estate Deed (ELED/Lady Bird Deed)**

Vermont offers an additional unique legal tool for landowners interested in guiding the future stewardship of their land. It's called an enhanced life estate deed (also known as a Lady Bird deed).

This deed divides property ownership into two interests: the life estate interest, which allows the original owner (grantor of the deed) to use and profit from the property during their life; and the remainder interest, which designates beneficiaries who will receive the property upon the owner's death. Key features include the grantor's control over the property during their lifetime, avoidance of probate upon death, and flexibility to modify the deed without beneficiary consent.

In Vermont, these deeds are primarily used in estate planning to pass property smoothly to heirs and avoid probate. They can also protect real estate assets from being used to reimburse Medicaid expenses (Medicaid Estate Recovery).

While valuable, these deeds can have tax and Medicaid implications and should be carefully considered, preferably in consultation with a Vermont real estate attorney.

## **C. Other Documents That May Be Included in an Estate Plan**

### **Advance Medical Directive**

An advance medical directive expresses your wishes for end-of-life care, and it names individuals who can make medical decisions on your behalf if you are incapacitated.



## Durable Power Of Attorney

A durable power of attorney is a legal document that gives another person the ability to manage your finances if you are unable to do so. This person is legally obligated to act with your best interests in mind. That could include writing checks, using credit cards, making loan and bill payments, making needed purchases, and selling assets.

## D. Determining the Future Use of Your Land

A second important question to ask yourself is whether you would like to guide the use of your land in the future, to ensure that some or all of it remains in its natural state.

Aside from the legal strategies described below, any good conservation strategy starts with a plan — one uniquely suited to your goals and objectives, your land, and your available resources. This can be a written forest management plan, developed by a licensed forester, or a stewardship plan developed by a forester or ecologist. Developing a management plan is an opportunity to engage your family, especially your heirs, in its goal-setting and its implementation — and it can provide valuable information to your successors.

## Use Value Appraisal/Current Use Programs

Paying property taxes on the land may be an issue for your family. “Current use” tax programs — Vermont’s is called the Use Value Appraisal Program — give landowners an opportunity to significantly reduce their property taxes, in exchange for keeping land undeveloped and producing public benefit.

Although these programs do not typically provide permanent protection for your land, they make owning forest and farmland more affordable and can be used in combination with other land conservation tools. Contacting a forester can be a good way to learn more about current use tax programs. See the “Resources” section for information on Vermont’s Use Value Appraisal (current use) Program.

## Conservation Easement

A conservation easement (CE) is a legal agreement that extinguishes some or all of the development rights of the land forever, but allows other rights — such as farming, forestry, and recreation — to continue, all while maintaining your ownership of the land. A conservation easement is a flexible tool that can be placed on all or designated parts of your land, allowing you to reserve house lots to provide financial value or housing options for your family.

Some conservation easements may require public access, while others may not. This usually depends on your preference, which organization you work with, and whether you are receiving funds for your CE. You may be able to sell a conservation easement, if your land has exceptional ecological or historical value. A conservation easement can also be donated, providing the landowner with a tax deduction for a charitable gift.

Since it means the land can no longer be developed, a conservation easement can lower the land’s value — which can help lower your taxable estate, possibly even dropping it below the estate tax threshold. Donating an easement can also reduce your income tax burden. In these cases, landowners are required by the IRS to have the land appraised by a qualified independent appraiser, to determine the value of the deduction.

***“Establishing a legacy plan for our forest has been one of the most important steps we’ve taken in conserving our land for future generations.”***

— Tim, Shrewsbury







In many cases, there will be a cost to the landowner, even if the easement is donated; the cost of long-term stewardship and protection is a big commitment and expense for conservation organizations. Associated costs include surveys, appraisals, and monitoring that ensure the terms of the easement are enforced in perpetuity. Some towns and organizations have funding to help with the costs of conserving land.

Currently, your heirs can put your land under easement within nine months of your death. That can provide tax benefits to your estate, meeting your goal of keeping some or all of your land in its natural, undeveloped state while providing financial benefits to you and/or your heirs.

Whether sold or donated, a conservation easement is held by a qualified conservation organization, often a land trust or a state conservation agency, which accepts the responsibility of monitoring and (if necessary) enforcing it. Before you include the donation of a conservation easement in your will, be sure you've met with the designated conservation organization and confirmed that it's willing to accept the easement.

### **Donation or Sale**

Beyond the option of a conservation easement, land can be permanently protected by donating it or selling it to a qualified conservation organization, such as a land trust, a state conservation agency, or a town. A donation of land may provide significant tax advantages as a charitable gift. Keep in mind that donated land may be sold by the organization as a way to generate revenue, unless the contract states otherwise.

### **Bargain Sale**

Landowners can sell their land or conservation easement at a price below its fair market value. The difference between the appraised market value and the sale price to a qualified conservation organization is considered a tax-deductible charitable contribution, providing some income and potentially some tax benefits.

### **Bequest**

Donating land or a conservation easement through your will may be another way to ensure your land's permanent protection and potentially reduce your estate tax burden. You can change your will at any time, and a bequest does not become effective until your death. This is a good approach if you need to keep the financial value of your property in reserve in case of unexpected medical bills or other needs, but want to be sure the land will be conserved if you don't need to sell it during your lifetime. Be aware that depending on the characteristics of your land, the organization receiving it may sell or develop it unless there is a prior agreement to conserve it, or it is already protected by a conservation easement. Be sure any commitments you seek are arranged in advance and are binding.

### **Life Estate**

Landowners sometimes negotiate a gift or sale of a property while reserving the right to occupy and use the land for life. In these cases, control of the property automatically transfers to the conservation organization upon the death of the landowner.



Conservation Options				
	Description	Tax implications	Duration	Maintains your ownership?
<b>Current Use</b>	A state program that reduces your property taxes in exchange for keeping your land undeveloped in accordance with a management plan.	Reduces property tax.	Temporary (in effect until the landowner withdraws or does something to disqualify the land).	Yes
<b>Conservation Easement</b>	A voluntary agreement that prohibits certain uses — typically development, subdivision, and mining — while allowing others, such as forestry and farming.	If donated, provides charitable deductions on income taxes and can lower the overall taxable value of your estate. If sold, may incur capital gains taxes.	Permanent	Yes
<b>Bargain Sale</b>	The sale of your land for a price lower than its fair market value.	Income from the sale is taxable, but the difference between appraised market value and sale price is a charitable deduction if sold to a land trust or government agency.	Permanent	No
<b>Donation</b>	Donating your land to a land trust, a conservation agency, or your community. Discuss your intentions with the recipient before making the bequest.	Provides a charitable deduction for income taxes, and lowers the taxable value of your estate.	Permanent	No
<b>Bequest</b>	Donating land or a conservation easement through your will. Discuss your intentions with the recipient before making the bequest.	Lowers the taxable value of your estate.	Permanent	Yes
<b>Life Estate</b>	Transfers real estate while maintaining your right to use the property for the rest of your life.	Provides a charitable deduction for income taxes, and lowers the taxable value of your estate.	Permanent	Gives you the right to use the property until your death

The gift of a property with a reserved life estate can qualify the donor for a charitable deduction, based on the value of the property donated and the value of the reserved life estate, which takes into account the donor's age. Landowners are responsible for upkeep and all management costs during their lifetime.

## E. A Few Words About Taxes

It has been said that the only sure things in life are death and taxes, and estate planning is about preparing for both. Land is likely one of the most valuable assets in your estate — and in view of the recent rise in real estate values (as of the date of this publication), your land's value may be greater than you think.







The amount and types of taxes your estate may face will depend on the value of your land, the form of ownership in which your land is held, and how your assets, including your land, are transferred to your family. The goal is to pass on your assets in a way that meets your family's goals, while minimizing the amount of taxes for which your estate becomes responsible.

The following is a summary of the various taxes that may affect you as a landowner, as you move forward with estate planning. Remember that the laws that determine these taxes can change. These descriptions do not represent the law in any particular year, but are a simple explanation of the taxes that may be involved when land is transferred between people or generations of a family.

For information specific to your situation, talk with a certified public accountant or a tax attorney who is familiar with land and its conservation.

### **Federal and State Estate Taxes**

These taxes are levied on your estate if its value exceeds a certain threshold. Federal and state tax thresholds often change from year to year. One opportunity to lower the value of your estate is through land conservation tools such as an easement, a donation, or other conveyance of land ownership.

### **Gift Tax**

This is a federal tax incurred on gifts given while you are living. You can give a certain amount per year without triggering this tax.

Giving under the taxable limit can be a useful way of transferring ownership or interest in your land slowly, while avoiding taxes. If you give more than the limit annually, the excess is applied toward your lifetime gift-tax exclusion. If at any point the gifts you gave during your lifetime — or that you designated as gifts in your estate — exceed that exclusion, the donor generally pays gift tax on the excess amounts. Gifts of any amount transferred between spouses are allowed tax-free.

### **Capital Gains Taxes**

This tax is assessed when you sell capital assets, including land. Capital gains tax is applied to the dollar amount by which your land and other assets have appreciated over time. For example, if you bought your land for \$50,000 and it is now worth \$200,000, the capital gains tax is applied to the increase of \$150,000 in your land's value.

Placing a conservation easement on your land is one effective way to lower its sale price, reducing the capital gain from the sale of your property. However, the sale of a conservation easement or a bargain sale can also trigger capital gains liability.

### **Federal Income Taxes**

Federal income tax can be reduced through a charitable donation, a bargain sale of land, or a conservation easement, all of which can qualify as a charitable donation.

### **Property Taxes**

As land values and assessments increase, local property tax burdens can be difficult for families to meet. Conservation easements and current use tax programs provide opportunities to reduce property taxes on your land. If land is conserved and its value is reduced, and if the owner or owners want to pay less taxes on the land, they may need to petition their town for a further reduction in its value.