

Intergenerational Transfer

I remember being the “young forester” and feeling awkward advising clients twice my age. This was particularly true when they were farmers who had worked their forests for 50 years and knew every trail, ridge, and nearly every tree by name.



I did reap some rewards when folks actually took my advice. After 38 years, new clients tend to be younger than I am. Over the years, I have had many conversations with landowners about what to do with their land for the next generation. I have seen it go well and poorly.

Now for the disclaimer: You will need professional advice from a lawyer and perhaps an accountant, and the forester fits in there too.

The average age of forestland owners is, well, mature. There are young folks coming on, and that is encouraging. I have many clients who have owned their land for decades. But let’s face it, the land outlives us. No matter our age, there will come a time when we are no longer the stewards. How do we make provisions for a smooth transition? What are the options? Is the land a blessing or curse? How much influence should we have over the next owners? Should we keep it in the family? We will consider these questions in this article.

No Easy Answers

Each family is different, and so is each woodlot. These are difficult questions, and there are no easy answers in most cases. First, let me go through a couple of stories, both good and bad.

I have a family I have worked with for my whole career. As the father aged, he transferred to the three kids. It became apparent that two had no interest, but one did. I strongly advised him to move around some assets so that the one daughter who loved the place would own it, with other assets going to the others. He followed my advice and passed away a couple years later. The one daughter now has the place to enjoy. I do not think she could have bought out her siblings and she has expressed appreciation for my influence to keep it in the family. So, all is well for this story. More often, even siblings who get along find themselves selling the land (sometimes at fire sale prices) and fighting over the money, and giving much of it to their lawyers. I’ve seen that too.

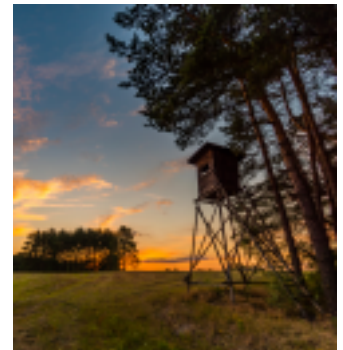
If it had gone to all three kids, what would have happened? I suppose there are at least three main options. They could have merrily shared the place, with one sibling getting most of the use, and perhaps taking most of the expenses. But this gets even more complicated as this generation considers what to do next or when there are arguments about costs, efforts, and amount of use. One could have bought out the others, if they could have agreed on a fair price. The third option is they could sell the place and divide the money. This is sad, especially when one of the kids loves the place.

I have another client-family made up of eight cousins. This was grandpa’s place, and it passed down

two generations as a family LLC with eight equal shares. Many of the members use the place and enjoy it, but the country cousins and city folk have different visions. They all used it as a base for summer and ski vacations, but the country folk got into the woods more, hunted, and cut the firewood. When I was first engaged to prepare a management plan, the city cousins were unfamiliar with the concept of cutting trees—especially under the guise of forest management, forest improvement, and wildlife habitat enhancement. This was all new to them. There is often some hidden key to unlocking a discrepancy, and I somehow found it. The city cousins would be satisfied if we could clear the view, restoring it to what they remembered as kids. This involved cutting a couple acres of lovely, young, straight cherry trees, which was anathema to the rest of us. But the city cousins understood that cutting trees had some benefit to them and allowed us to do normal “forest management” on the rest of the lot if we could give them their view.

Another client tended his aging aunt for 10 years, with the stated expectation that he would inherit the property. When the dust settled, it turned out that the aunt had left him only the life-use of the place, and the ownership went to a national anti-hunting group. Since he is an avid hunter, this came as a slap in his face. This may have been the aunt’s intention, or just a misunderstanding, but he has no equity.

I worked with a farm-family, and when the elderly mother finally passed away, the land was inherited by the four middle-aged children. We had worked on a detailed plan to divide the land into four lots of fairly equal value that would all be eligible for our state’s forestland tax exemption. I prepared maps, we set the iron pins for the corners and painted the lines through the woods. One sibling wanted the open land, which is considerably more valuable. One sibling wanted the house, which was in poor condition, but a prepared building site. This left two heirs with mere woodlots of less value, but everyone seemed OK with that. The town was not satisfied with our maps, so a licensed surveyor was needed, but our groundwork saved considerable expense. Somehow, the barn was split off for the grandson, and the open land went to a sister, but the other transfers were not completed. One member (the one getting a woodlot plus the house) cannot agree to anything and is holding up the dispersal. They are about to engage a long, expensive legal battle, even though they started with an agreement that included most of the details. What’s up with that?



Some Options

A client came up with the following list of options and asked for my comments:

- Transfer the land within the family, perhaps with a family trust or LLC.
- Cut the timber before you sell/transfer the land.
- Sell the land to another owner.
- Sell the land, but keep the house/camp/special places, perhaps only for life-use.
- Place a conservation easement to restrict land use into the future.
- Donate the land to some land-based (or other) charity.
- Donate to your town, county or state government.

1) A transfer within the family is often the first choice, and how to do this smoothly is the challenge. Who is interested in keeping it? Are they able to accept the costs and do the maintenance? Is there one outstanding person, or will it be a group ownership? If there is one particular heir who is the best choice, perhaps there are other assets to give to other offspring. And, training this person in the maintenance of the property can take place over a long time, if your health holds up. Groups are more complex, and both family trusts and LLCs are used to do this. The benefit of a trust is that the ownership transfers without going through any Probate Court. Shares of an LLC can be sold, or gifted, over time for a gradual transition. The new owners need to understand the costs, benefits and income, and management of the property. Both the trust and LLC format can go on for generations.

2) Often, I get a call that someone is planning to sell their land, so they want to cut all the valuable timber first. I usually advise against this. In most areas, there is plenty of recently logged land for sale, often with

advertising slogans like “wildlife haven,” “new trail system,” or “views cleared.” I work with many owners seeking forestland and finding the lot with a decent stand of timber—or at least without the recent scars of logging—is a huge plus. Buyers will often pay more for the standing trees than a logger or mill will pay. So, I advise the seller to pay me for a timber inventory and valuation so they can advertise the standing timber as part of the sale price. Not only does this draw attention to the condition of the forest, but it also makes the lot stand out to prospective buyers. And the next owner can decide what type of management philosophy to employ. A timber sale before selling the land might be justified to create access or other crisp, value-added improvements.

3) Selling the whole lot is always an option and can be postponed or executed sooner depending on the situation. This is by far the simplest choice and there are some things to consider. While it is a bittersweet thing to pass on your land, the new buyer will be someone who wants what you are offering. There are signals that go into the marketplace: If your land is enrolled in “Current Use,” then the penalties to withdraw discourage developers. This is not as “permanent” as a conservation easement, but is significant. For that “perfect estate property,” having a high asking price limits the pool of buyers to folks that can likely afford the maintenance. And whatever the fair market range may be, you can always discount it to selected buyers who might share your values or objectives.

4) Selling the land and keeping the house/camp or its “life use” is not a great idea. The folks who would buy this want the same things you have—a place for occasional use, vacation, hunting, etc. The “timber investment” portion is minimal for just the land if there is a house attached. Interest would be limited, and this sort of thing usually works only for particular situations. For example, if you sold it to a neighbor who wanted the woodlot or to one of your kids (or a friend) to transfer over time.

5) Conservation easements are an important topic. This has become a popular way to exercise control over the land after you are gone. Easements are often donated and seldom purchased except for some high-value farm easements. So, this involves donating a portion of the value—the development rights—and also accepting 10 to 20 pages of various restrictions on land use. Some of these are more friendly to active forest management than others. This seems to be more complex than it needs to be, with benefits for the conservation group and just liabilities for the next owners. We are already dealing with out-of-date language on 30-year-old easements. The summary is: Land trusts may be your best friends while courting you for a signature. After you sign, they control your land and are not always your friend. And you get to pay the taxes. They do not pay taxes on the portion they own. I am more in favor of donating/selling “in fee total” to a conservation group.

6) Donating to a land-based, nonprofit, conservation group: There are a number of different groups, each with a “flavor.” The main reason these groups end up with land is that these are deductible donations to a 501(c)(3) charity. So, the tax considerations are foremost. Finding a group that shares your particular interest would be key. The Nature Conservancy is well known for “flipping” land to the government, and my particular bias is that the government owns more than enough land and poorly stewards what it has. I would prefer to see the land in private ownership, on the paying end of the tax spectrum, and in some sort of active forest management. (This is my own bias here.) Other groups might hold the land with their particular interest: The Sierra Club would probably not ever harvest anything, whereas the Ruffed Grouse Society might employ active management. In fact, most of these organizations would simply sell the land—either to private or public ownership—and use the money for their core goals. There are very few groups that would give you a market price, but some might be able to give a partial cash price, with the remainder as a donation from you.

7) Donating (or selling) to a government entity: If you are interested in this option, you should talk to the particular group. Your lot may be suited to add to the “town forest” or a state park or forest. It should have some particular features that benefit the public or at least be adjacent to other land they own. I do not think you get the same tax benefit by donating to the Government, but you might. I have mentioned my particular bias, that government seldom does the best stewardship compared to private owners.

Here is another success story: A family had their vacation retreat, and then “retirement farm,” for 40+ years. I worked with them for about 20 years. They have a modest house with several farm buildings and about 25 acres of pasture/ hay land with 100+ acres of forest. In their retirement, they ran a pretty good hobby farm with beef cows mostly. They sold grass-fed beef at the farmer’s market, cut firewood and sawlogs for project wood, sold some wood, had several timber sales over the years but grew their best trees. They were both about 80, and the farming was too much. We talked about a range of options, including breaking up the property into several lots, which I discouraged. We ended up doing a substantial harvest over most of the lot, and they made a bundle on high-value timber: mostly premium oak. Because of the

way it was managed, the forest still looks pretty good and is well stocked, though there are big stumps all over. They have four kids, all scattered with no interest in the farm. They finally sold the place, all together, to a young family with small kids. I met with them to show them their forest and explain the history and the options ahead. While it will be 10 years or more to the next major cut, there is plenty of wood for projects, firewood, etc. They have the energy and ambition to benefit from all the work of the previous owners and can pick up where they left off.

Recommendations

My overall recommendation is to keep the land and enjoy it for as long as it makes sense. If it cannot be kept in the family, sell it to someone with a similar interest like the story above. Maintenance needs and costs will be a consideration as you become less able to do this yourself. But if you can hold the property for 10 more years, it might make a difference in your family's interest and finances. Grandkids growing up or career changes might change their minds, and a retreat to the mountains can become attractive. They might never be able to "purchase" something like this, but since it is already in the family, they have a better situation. You might have other assets for the other kids. And if you sell it out of the family, that is fairly simple. Your place is what you have made it, and it may be perfect for the next owner.

In my own family, my father-in-law owns his parents' vacation place, and my wife was there as a kid for vacations. There are four sisters, and only one of them has interest and ability to keep it. I have told him to make sure that this sister ends up with it, free and clear without the siblings. All I want is the painting "Uncle Ken" did of the huge pike jumping out of the water after a woodduck. ■



Robbo Holleran is a private, consulting forester helping landowners meet their goals in Vermont and adjacent areas. His work has him outdoors about 150 days each year, plus play time. He is one of the authors of the 2014 Silvicultural Guide for Northern Hardwoods in the Northeast.
