



# Protecting *Your* Legacy

A Massachusetts landowner's guide to conservation-based estate planning

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## CONTENTS

- 2** Estate Planning Is for Every Landowner
- 4** Articulating Your Goals (with or without family)
- 11** Estate Planning Tools
- 25** Taxes
- 33** Closing Thoughts

# Landowner Stories

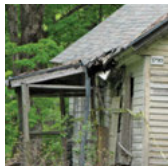
Throughout this publication, you will find real-life case studies about how some Massachusetts landowners and families used a variety of estate planning professionals and tools to develop creative solutions to meet their needs and goals.



**7 Riley Family**  
Communicating your conservation wishes to your family



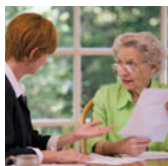
**8 Smith Family**  
Dividing assets and land among your children



**9 Alma Jones**  
Warning! What happens when you do nothing



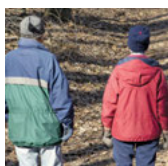
**10 Brown Family**  
Keeping the peace: family meetings and the role of a family trust



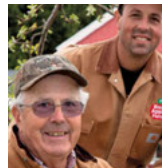
**13 Sylvia Kelly**  
Using a will to conserve land



**18 Thompson Family**  
Passing it on: using a trust and timber harvesting to maintain a family property



**22 Sterling Family**  
Working with a land trust to find a creative solution



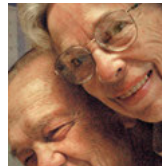
**23 Bill Rose**  
Keeping it in the family: sale of an APR and donation of a CR



**24 Hoag Family**  
One step at a time: phased conservation and a reserved life estate



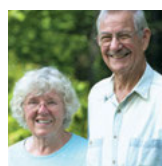
**27 Sisters Grace Kingsbury and Alice Williams**  
Financial benefits of conservation: MA Conservation Land Tax Credit Program



**28 Gordon Family**  
Spending money to save money: expert help to avoid taxes



**29 Peter and Ellie Johnson**  
Wrestling with taxes: handling estate, capital gains, and property tax issues



**30 Coolidge Family**  
Transferring ownership to a nominee trust to reduce taxes



**31 Bailey Family**  
Going beyond the temporary land “protection” of Chapter 61



**32 Kate Kerivan**  
Transferring a land-based business

# Estate Planning Is for Every Landowner

Your land is part of your legacy. You have been a good steward of your land, carefully making decisions about its use. Planning what will happen to your land after you are gone is the next critical step of being a good steward. In fact, it may be the most important step you can take as a landowner—not just for your benefit but for the benefit of your family, your community, and the land itself.

- **Who will own your land, and how will it be used?**
- **What will your legacy be?**

Making decisions about the future of your land may seem overwhelming. It can be difficult to initiate conversations with your family, to sort out the different professionals involved in estate planning, and to know how to take the first step. Try not to get overwhelmed—the hardest step is often the first one. **This publication can help get you started, and discusses the types of professionals who will help make it happen.**

## WHY PLAN?

An estate is the total of all your assets, which includes your land, house, and bank accounts, as well as any stocks and bonds. An estate plan ensures that your assets will be distributed in a way that will meet the financial and personal needs of you and your heirs. Although the phrase “estate plan” may bring to mind an image of a single all-encompassing document, an estate plan is best thought of as a combination of documents (such as a will) and tools (such as a conservation restriction) that will achieve your goals when implemented together. Estate planning is not just for the wealthy or for those who own “estates”; if you own



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land, then estate planning is a necessary and valuable step for protecting your legacy.

Successful estate planning will help you meet your financial and personal goals as well as the needs of your heirs. Every landowner and every family is different; some have children who are prepared and excited to become the new owners of the land, while others are searching for creative solutions to relieve the financial pressure and responsibility of owning land. Landowners who do not have children may be seeking a way to maintain the land as forestland and find a suitable owner.

## The good news is that land is a flexible asset that lends itself to creative solutions for gaining financial and personal value.

Successful estate planning will often avoid certain taxes, increase the assets given to your heirs, address your family's goals for owning and using the land, ensure financial security for you and your family, and maintain good family relationships. If you do not plan your land's future, the land will likely pass on based on the type of ownership in which your land is held. Failure to plan your land's future may result in negative financial consequences, may allow the land to be treated in a way counter to your goals, and may lead to tension or animosity among your family members, which can last long beyond your passing.

Your land is likely one of your most valuable assets, especially if you have owned it for a long time and it has greatly increased in value. However, land is not like other assets. Because land can be connected to memories, experiences, and feelings not typically associated with other assets, such as stocks and bonds, your land may also have significant personal value. Dividing your assets among family members brings with it the challenge of providing for their financial as well as personal needs.

If you have family, some of them may be interested in receiving financial value from the land or obtaining a piece of land on which to build a home. Others may be interested in receiving personal value from the land by keeping it in the family and in its current or natural state. And, of course, it is possible that family members may want or need a little of both.

The good news is that land is a flexible asset that lends itself to creative solutions for gaining financial and personal value. Whether your intention is to keep the land in your family or not, it is possible to develop a solution to meet your needs and goals as well as those of your family.

Unfortunately, there are countless examples of landowners who put off a decision about their land until it's too late. The earlier you start your planning process, the more options you will have for your land.

## General Estate Planning

Every landowner is different, so there is no such thing as a one-size-fits-all estate plan. But there are three elements that are universal, and an attorney can help you craft them relatively easily. Every estate plan, at a minimum, should include the following:



### a will

a legal document that specifies how your assets should be handled after you die



### a durable power of attorney

a legal document that specifies a person of your choosing to handle your financial affairs if you are unable to do so



### a health-care proxy

a legal document that specifies a person of your choosing to make medical decisions for you if you are unable to do so

In addition to these documents, estate planning can be used to determine the future ownership and use of your land.

## Conservation-Based Estate Planning

This publication focuses on **conservation-based estate planning**—those elements of estate planning that deal directly with the goal of keeping some or all of your land in its natural, undeveloped state. Most people understand their options to subdivide and develop their land. However, many are not aware of their land conservation options, the variety of helpful legal tools used for transferring land, and how using these tools separately or in combination may produce a result that better meets one's personal and financial goals.

# Articulating Your Goals (with or without family)

Begin by thinking about what you want most—to see your land remain undeveloped forever? to maintain family harmony? to ensure financial security? to preserve flexibility for your heirs? You may want to rank your goals in order of their importance, and list any challenges standing in the way of those goals.

If you own your land with others, your next step will be to talk about your goals with your spouse or co-owners and try to incorporate shared goals and values as you lay the foundation for your plan for the future of the land.

## INVOLVING FAMILY IN THE DECISION

If you have children, it's up to you to decide to what extent you want to involve them in determining the future of your land. Every family's situation is different. Involving your family

can help avoid conflict and get their buy-in. In planning for the future of the land, families may be forced to face difficult subjects, such as aging, death, and how family assets are to be distributed among family members.

Discovering your family members' needs and wishes can take place either at a family meeting or through individual conversations when there is a good opportunity to talk. Be sure to choose the strategy that will best fit your family's style. No matter the strategy chosen, your goal is to get a sense of your family's personal and financial goals and how they feel about the land. These discussions are an opportunity to gain an understanding of your family members' wants and needs, gather questions, and discuss options. In doing so, you're also creating a protocol for honest, productive, and respectful family communication.

A family meeting is a forum in which family members can share their ideas and concerns. The goal of the family meeting is to give individual family members the opportunity to express what the land means to them as well as their financial or practical needs, and to allow the family to hear the needs and wants of others. This can be accomplished by simply asking each person to talk about how he or she feels about the land. Is it a priceless family heirloom to be protected at all costs? Is it a financial asset and nothing more? Or is it something



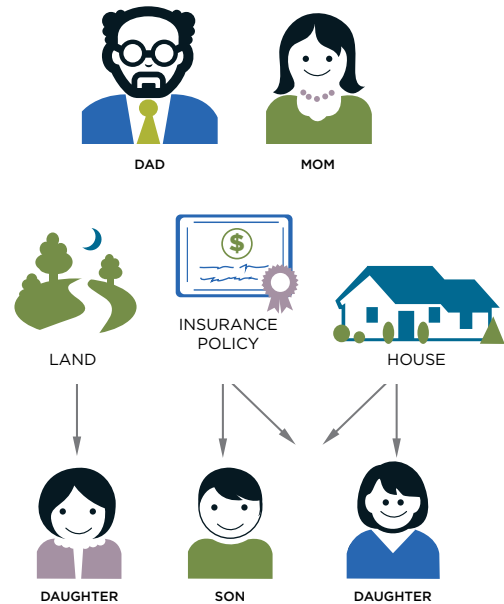
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**The goal of the family meeting is to give individual members the opportunity to express what the land means to them as well as their financial or practical needs.**

## Equal vs. Equitable Treatment

From the time their children are very young, most parents strive to treat each child the same. When it comes time to plan the future of your land, it's important to realize that it's possible to treat your children equitably, or fairly, without their inheritances being precisely equal. You may not have enough assets to give your heirs shares of equal value, and different heirs may be carrying more of the management responsibility or costs for the land. If you have an honest conversation and set up a fair process to determine your children's needs and values, you can still treat them equitably without dividing all your assets into equal shares.

Perhaps other assets, like a life insurance policy or proceeds from the sale of a house, can go to one child while the land goes to another. Maybe selling a house lot will provide enough income for one heir so that another can receive the land. Giving your land to each heir in equal parts can set the stage for the undesirable outcome of further dividing or selling the land to generate enough income for one uninterested heir.



If you have an honest conversation and set up a fair process to determine your children's needs and values, you can still treat them equitably without dividing all your assets into equal shares.

in between? By listening to one another, family members may learn that they share certain feelings about the land—or, just as important, that there are differences. Together, this information can guide your next steps and inform your work with estate planning professionals. It may be helpful to have an estate planning professional attend a family meeting to provide technical information and answer questions directly. See “Guidelines for Holding Family Meetings and Practicing Good Communication” on page 6.

Sometimes a family's history or dynamics prevents them from having healthy conversations about what to do with the land. However, avoiding these important conversations and letting your family figure it out after you are gone will likely lead to even more tension. A neutral person or professional facilitator can often help guide these difficult conversations; alternatively, simply having individual conversations with family members can be a good strategy.

Though your goal may be to get your family to agree on a plan for your estate, there may be situations in which families are not able to work together or agree. In this case, you need to be prepared to take the input you have received; work with the necessary professionals; and do what you believe is right for yourself, your family, and your land. Do not get paralyzed by family disagreements. If you avoid planning because people

don't agree now, you can be sure the conflict will be greatly exacerbated after you are gone.

## MOVING AHEAD

Maintaining momentum after you have determined your goals for the land is important. A list of questions and information needs collected when setting your goals will help determine your next steps. This list can help guide you to the most appropriate estate planning professional to meet your needs. For more information about family communication, visit [MassWoods.org](http://MassWoods.org).

SEE “GUIDELINES FOR HOLDING FAMILY MEETINGS AND PRACTICING GOOD COMMUNICATION” ON PAGE 6.

A professional facilitator is trained to assist people in conducting healthy conversations and reaching consensus. A facilitator can help organize meetings, make sure each family member is being heard, and move the process forward by setting deadlines and following up.



## ***Guidelines for Holding Family Meetings and Practicing Good Communication***

- Try to hold the meeting in person if possible, but not over a holiday or during a family celebration, when emotions may already be running high. Avoid email, as it can lead to misunderstandings.
- Hold the meeting in a space where everyone feels comfortable. Familiar places can reinforce old habits, so a neutral location may be preferable.
- Err on the side of inclusiveness, especially at the beginning of the process. Inviting all family members, including spouses, ensures that everyone hears the same information firsthand.
- Take a walk on the land beforehand if possible to give everyone an opportunity to reflect on what the land means to him or her.
- Ask everyone to avoid making assumptions and try to keep an open mind. Find fault with ideas, not people.
- Give everyone an equal opportunity to share his or her thoughts. This may mean encouraging quiet family members to talk and asking more vocal ones to listen.
- Use questions or “tell me more about that” to explore underlying concerns and interests.
- Be clear about who is responsible for what and when. Establish follow-up tasks and deadlines.
- Use the services of a trained facilitator if family dynamics suggest that your family needs assistance conducting healthy conversations and reaching consensus.





# Riley Family

Barre, Massachusetts

**TOOLS USED:** SALE OF LAND TO A STATE CONSERVATION ORGANIZATION • DONATION OF A CONSERVATION RESTRICTION  
RETAIN HOUSE LOTS

**PROFESSIONALS:** ESTATE PLANNING ATTORNEY • LAND TRUST • STATE CONSERVATION AGENCY

**C**ommunicating your wishes for your land to your heirs is a critical first step in estate planning. Even more importantly, your wishes should be codified in your will. Luckily for Beatrice Riley, because she clearly and persistently communicated her wishes to her heirs, they worked hard to carry her wishes through, even in the absence of a legal imperative in her will.

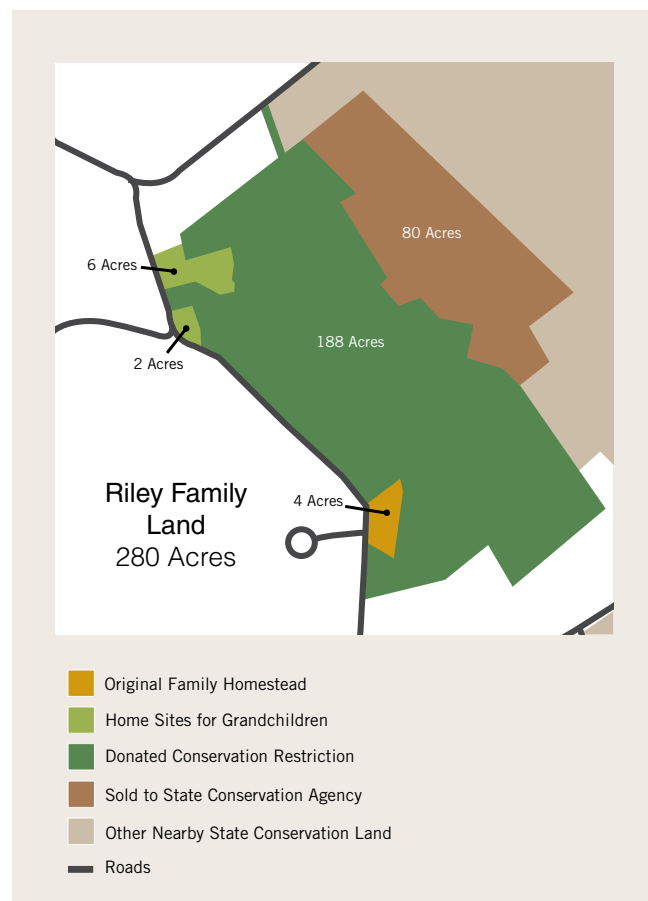
Beatrice owned a house with 280 acres of land in Barre, Massachusetts. She loved the land and tried to instill a strong land ethic in her grandchildren by taking them blueberry picking, canoeing, fishing, and jeep riding on the trails. As the years passed, she would often talk to her family members about the land and ask them if they would care for it like she had. When she grew older, two of her three grandchildren moved back to the house to take care of her. She became very ill, and when her death was imminent, the grandchildren needed to make a decision about what to do with the property. There was no direction in the will. Fortunately for Beatrice, one of her grandchildren who had power

## THE LAND TRUST WAS ABLE TO HELP THE FAMILY UNDERSTAND THEIR OPTIONS AND ADVISED THE FAMILY ATTORNEY.

of attorney wanted to honor her grandmother's wishes to protect the land. Still, the family was concerned that the estate, capital gains, and other taxes would be too great to bear, forcing them to sell the land for development. All three grandchildren had a number of conversations about the future of the land and agreed that they wanted to honor their grandmother's wishes and conserve the land but also hoped to be able to afford to live there with their families by somehow reducing the taxes associated with the inheritance.

The family attorney, who had a longtime relationship with Beatrice, wasn't sure how best to help the grandchildren conserve the land, so he recommended that they contact Mount Grace Land Conservation Trust. The land trust was able to help the family understand their options and advised the family attorney. Because the Riley land had important natural resource values, the Massachusetts Department of Conservation and Recreation

purchased 80 acres of land to protect the water quality of the Quabbin Reservoir. But no funding source was available for the remaining 200 acres. To protect the rest of the property, the family donated a conservation restriction (CR) on the remaining land to the land trust, except for an area around the original homestead and two additional areas where the grandchildren could build houses in the future. Placing a CR on the property was also in their financial interest: the CR significantly reduced the value of the land and the taxes associated with the inheritance, and the donation of the CR was taken as a charitable gift and reduced the taxes even further. As a result, the three grandchildren and their families were able to afford to keep and live on the land. Even though the land surrounding the houses is permanently conserved, the CR allows them to continue to use the land for recreation, gardening, and forestry.



# Smith Family Central Massachusetts

**TOOLS USED:** DONATION OF A CONSERVATION RESTRICTION • RESERVING BUILDING LOTS  
**PROFESSIONALS:** ESTATE PLANNING ATTORNEY • LAND TRUST • ACCOUNTANT • APPRAISER

**F**inding out what your heirs need can be helpful in deciding what to do with your land. But being fair with your heirs does not always have to mean providing them with an inheritance that is financially equivalent, as demonstrated by Mrs. Smith's example.

Mrs. Smith inherited a 5-bedroom house, a barn, and 350 acres that had been in her family for over 200 years. Her two daughters had spent summers with their grandparents and loved the land. In her 70s, Mrs. Smith wanted to see to it that her daughters could continue to enjoy the property after her passing and liked the thought that it would remain much the way it had always been—fields and woods.

After open conversations with her daughters about the land, Mrs. Smith learned that her younger daughter, Jane, was interested in retiring, living at the homestead, and running a bed-and-breakfast. The older daughter, Sue, lived in Vermont and wanted to stay there. To decide on a fair split of her assets for her daughters, Mrs. Smith first had the property appraised. The appraised value of the



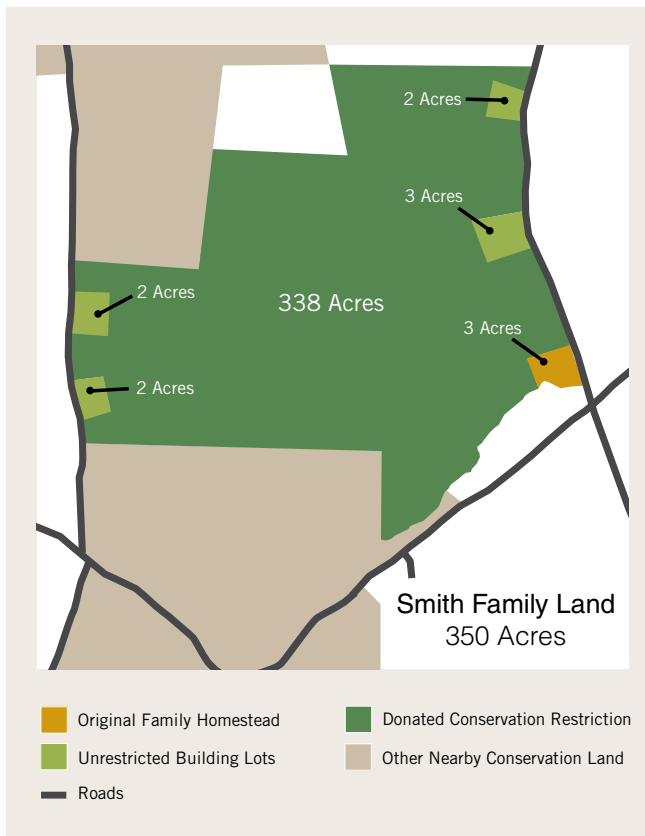
Jackie Cooper

house and land was so high that federal estate tax would be due, and there wasn't enough cash in the family to pay for it; therefore, some of the land would need to be developed to cover the estate taxes. Thankfully, after Mrs. Smith discussed the situation with a tax attorney and her accountant, another option emerged to keep most of the land in its natural state while also providing a fair inheritance for her two daughters.

Mrs. Smith put a conservation restriction on

**THANKFULLY, AFTER MRS. SMITH DISCUSSED THE SITUATION WITH A TAX ATTORNEY AND HER ACCOUNTANT, ANOTHER OPTION EMERGED TO KEEP MOST OF THE LAND IN ITS NATURAL STATE.**

338 acres and donated it to the local land trust, reserving 3 acres around the house as well as four additional house lots. The original homestead and 3 acres will pass to Jane so that she can pursue her business plan. Sue will inherit the remainder of the family land and receive money from the sale of the house lots. Sue and Jane will not be burdened with an excessive estate tax when their mother passes away because the CR reduced the value of the land. And Mrs. Smith received an immediate income tax deduction from the donation of the CR and peace of mind that the land would largely remain as fields and woods.



# Alma Jones

Central Massachusetts

**TOOLS USED:** NONE

**PROFESSIONALS:** NONE

**S**ometimes the difficult decisions involved in creating a plan for your land can make it easy to delay the process. Unfortunately for Alma, she waited too long, and her land and heirs suffered the consequences.

Alma stayed on her family's farm after her siblings moved away to raise families. She shared with her friends and relatives her desire for her farm to remain the way it was. She talked to a land trust and to her lawyer about how to accomplish that goal, but she never reached a decision about what exactly to do with the land, and as a result, she never even made a will.

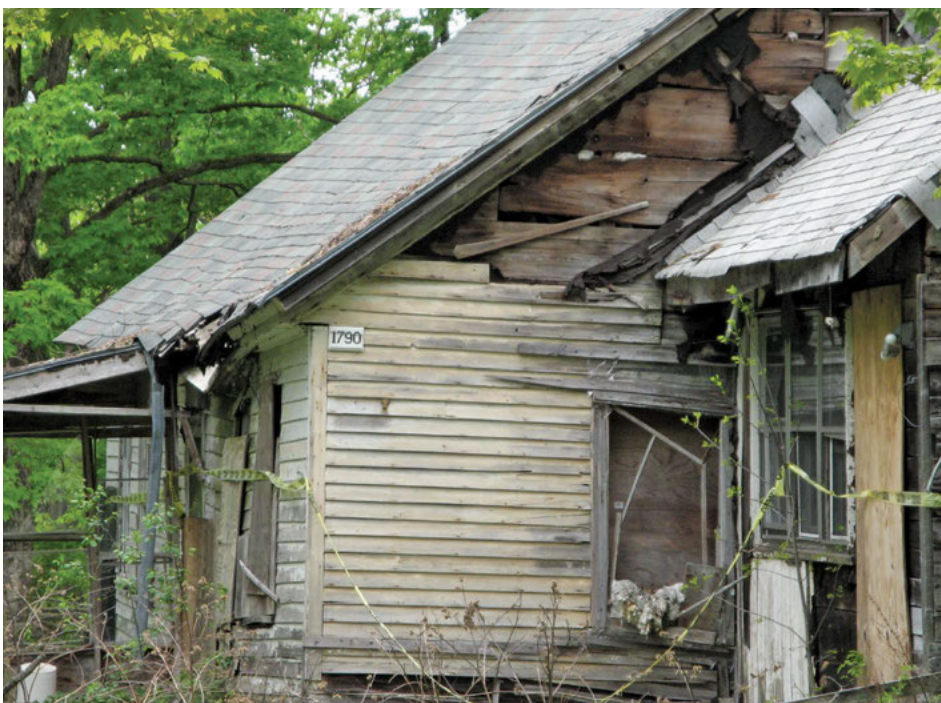
After Alma died, the land passed to her three nieces. One niece knew perfectly well what her aunt had wanted and felt the same way herself. She got in touch with a land trust and tried to convince her cousins that they should give or sell the land for conservation. But the other two either didn't know what Alma had wanted or didn't care. They wanted money, and as much as possible. They contacted a local developer who offered them cash, even for just their two-thirds interest. The conservation-minded niece eventually gave her one-third interest to a



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land trust, along with some money that she hoped the land trust would be able to use to buy out the cousins. But they sold their two-thirds share to the developer instead. So the land trust owned a one-third interest, and the developer owned a two-thirds interest, and that's how it has remained for a number of years. Either the developer or the land trust could bring a partition action to get a court to divide or sell the land, but so far neither one has done that.

So the land has not yet been developed, but neither has it been protected as Alma wished. And the house, which was built in the 1700s and which the local historical society had hoped to turn into a museum, was recently torn down: the land trust and developer could not agree on what to do with it, so it slowly rotted into the ground until it became a danger to the neighborhood.



TOR

# Brown Family Western Massachusetts

**TOOLS USED:** FAMILY TRUST

**PROFESSIONALS:** FACILITATOR • ESTATE PLANNING ATTORNEY

**A**s is the case with many family summer homes and properties, ownership of the Browns' 500-acre farmstead in a small town in the Berkshires was very complicated and only getting more so as the family grew. The farm's ownership was divided among three generations of family members and 29 individuals who all loved the rolling meadows, the deep woodlands, and vacations in the historic farmhouse. Recognizing that their complicated fractional ownership structure was too cumbersome for the family to effectively manage into the future, one of the second-generation family members initiated a series of family meetings at the farm to assess their options and find a more straightforward ownership solution.

## THE FARM'S OWNERSHIP WAS DIVIDED AMONG THREE GENERATIONS OF FAMILY MEMBERS AND 29 INDIVIDUALS.

Since so many people were coming to the meeting from all over the country, this family member recognized the need to have a professional present to make the best use of their limited time together. With the assistance of a professional facilitator, the family participated in a daylong family meeting once each summer over a three-year period. The facilitator kept each meeting on task,



Mari Hall



Bill Warren

helped maintain civil communication and dialogue, and made sure each participant was able to speak his or her mind. With the assistance of one family member who is a lawyer, they created a trust open to all the descendants of the original family members, which would keep their administration costs down since they would not need to update their documents every time a family member died or was born. A small family subcommittee oversaw the transition and drafted a mission statement for the trust that highlighted the property's role as a place to "renew family ties and peacefully appreciate the beauty and quiet of the land." Bylaws were written that guide members' use of the house and land, levy dues to pay taxes and upkeep, and establish procedures for nonpayment and election of officers.

Though the family members continue to be concerned about managing the farm's rising costs in the future, they have a solid ownership structure in place and a history of effective, healthy communication to build on.

# Estate Planning Tools

There are two important questions that can help drive your legacy planning process:

- **Do you want to determine who will own your land?**
- **Do you want to control the use of your land in the future?**

These questions can help determine the estate planning tools that will help you achieve your personal and financial goals.

## DETERMINING THE FUTURE OWNERSHIP OF YOUR LAND

If you don't want to determine who will own your land, you can sell it and use the proceeds to achieve your goals. If you do want to determine who will own your land, there are conservation-based estate planning tools that will help you formalize your wishes.

### USING WILLS TO DETERMINE WHO WILL OWN THE LAND

A will, also called a last will and testament, is the most commonly used estate planning tool. A will is a legally binding document that states how you want your assets distributed once you have passed away.

Wills are simple, inexpensive ways to address many people's estate planning needs, but they can't do it all. For example, a will won't help you minimize taxes or avoid probate. Probate is the winding down of your affairs under the supervision of the courts. Since probate makes all your assets public information, some people want to avoid it. However, for families that are dealing with conflict or miscommunication, it can be beneficial to have the courts involved.

In order to be effective at passing your land by way of your will, you need to ensure that the way you own your land permits

you to pass it on that way—and, if so, that your will is written in a way that ensures it will achieve your desired goals.

Following are some considerations for the development of a will that effectively distributes your land assets to 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.

### Description of 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 owning it as the survivor of joint owners, it is helpful to state your ownership interest in your will.

### Beneficiaries

Your will should include the names of the individual(s) (spouse, children, siblings) or organization (land trust, state conservation agency, local town) to which you would like to give your land.

If you do not have heirs and are interested in giving your land to a land trust, state conservation agency, or local town, it is highly recommended that you meet with the organization and discuss your intentions. Though you might think that any organization would jump at the chance to own your land, be sure to have in-depth conversations with your chosen recipient,

An estate planning attorney specializes in the legal strategies and tools used to help you reach your personal and financial goals. Your family attorney may not be qualified to help you plan for your land. Land is a unique type of asset, and not all estate planning attorneys have expertise in dealing with it. When developing an estate plan, work with an attorney who has experience with land and the conservation tools available to help you meet your goals.

To find an attorney with conservation experience, visit [MassWoods.org](http://MassWoods.org).

as some organizations have financial requirements for accepting land or would rather sell your land and put the proceeds toward their mission. Donating your land would qualify as a charitable gift and may provide your estate a tax break. Contact a tax attorney or a certified public accountant with experience in land conservation to learn about the tax implications of a charitable gift of your land.

### Avoid Conditions in Your Will

It is not advisable to set up conditions for the ownership of the land—for example, “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 thus may not ensure the outcome you want. In addition, wills are intended only to transfer your assets according to your wishes and are therefore meant to have a limited life span.

If your goal is to keep some or all of your land undeveloped, it is recommended that you consider placing a conservation restriction on the land (see “Permanent Land Use Options” on page 19) or giving the land to a conservation organization, such as a land trust or a state conservation agency (see “Beneficiaries” on page 11).



Sean Pollock

### Sharing Your Goals in a Legacy Letter

If you are interested in keeping your land undeveloped, but donating it to a conservation organization or placing a conservation restriction on it doesn’t meet your goals, an informal option would be to communicate your intention for the future of the land through a legacy letter.

A legacy letter—which can be attached to your will to provide additional information—is written to your beneficiaries and is intended to share your knowledge, beliefs, values, and hopes. A legacy letter is not a formal legal document, but it can be very helpful to your beneficiaries in understanding your wishes and providing guidance to their future decisions about the land.

Some things you may consider including in your letter are

- the history of the land, including the story of how you came to own it
- the ecological, historical, or cultural value of the land
- favorite memories of the land
- aspects of the land you enjoy most
- work you have accomplished on the land
- 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! The goal of the letter is to pass your legacy on to your beneficiaries in your own words.

## USING THE TYPE OF LAND OWNERSHIP TO DETERMINE THE FUTURE OWNERS

### CURRENT OWNERSHIP

A great place to start your conservation-based estate planning is by reading your deed, which lists your current form of ownership, and understanding the implications of this form of ownership. To find your deed, visit [masslandrecords.com](http://masslandrecords.com). An estate planning attorney, a land trust, or a forester can also 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—and it might not be what you want to have happen with your land. If your current form of ownership doesn’t meet your needs for passing on your land, meet with an estate planning attorney to learn about other options for the ownership of your land.

If you do want your family to continue owning the land, you will need to 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. Determining which form of ownership is best for you depends on several factors, including the number of people who will be sharing ownership, liability concerns, how income from the land is taxed while you are alive, and how the land will be taxed when it is transferred. There is a range of land ownership options; bringing your goals, or those of your family, to an estate planning attorney with land conservation experience is a great way to sort out which type of ownership will be the best fit.

# Sylvia Kelly

Central Massachusetts

**TOOLS USED:** POSTMORTEM CONSERVATION RESTRICTION  
**PROFESSIONALS:** ESTATE PLANNING ATTORNEY • LAND TRUST

**One simple estate planning step you can take right away is to be clear in your will about your wishes for your land.**

Sylvia lived on the family farm her whole life. She never married and had no children. When she was in her 80s, everyone in her immediate family—her nieces and nephews, her sisters and their husbands, and Sylvia herself—agreed that the farm should always remain a farm and never be sold for development. But no one quite knew how to do it. One niece had heard of conservation restrictions, and she convinced Sylvia to talk with land trusts and conservation agencies. Sylvia was far from wealthy, and she was hoping that a conservation agency would buy the CR from her, but her land was not on anyone’s priority list. As the conversations continued without any positive result, Sylvia knew she had to make a will. She ultimately signed a will that instructed the executor to put a CR on the farm if she didn’t get it done herself, and then the farm with the CR was to be turned over to her nieces and nephews. As it turned out, Sylvia was unable to complete the restriction herself before her death.

In hindsight, the will could have been more specific about the terms of the CR, as it gave the executor



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(one of Sylvia’s sisters) very broad discretion to determine such things as whether the CR should allow for multiple house lots in addition to the existing farmhouse. Had some of the nieces and nephews been more interested in selling house lots for cash and less interested in protecting the farm, this could have resulted in a big dispute about this issue, and in all likelihood, a lot less of the farm would have been protected. As it turned out, the family agreed that the CR could allow for one more house to be built and the farmhouse to be sold separately from the land, since it was of historical significance and thus required an owner appreciative of historical buildings.

**THIS ALLOWED THE FAMILY TO PLACE A CR ON THE LAND UP TO NINE MONTHS AFTER HER DEATH TO SIGNIFICANTLY REDUCE ITS TAXABLE VALUE.**

As a general rule, estate assets are valued as of the date of death for estate tax purposes. Fortunately, as neither Sylvia nor the lawyer who drafted her will knew this initially, the estate tax law allows for a post-mortem conservation restriction. This allowed the family to place a CR on the land up to nine months after her death to significantly reduce its taxable value. Since the farm had substantial development potential, this made a big difference in the amount of estate taxes due from Sylvia’s estate. Were it not for this provision, the farm would have had to have been sold in order to raise the cash to pay the estate taxes.



Kristina Ferrare



**Direct ownerships** are those in which a person or persons own the land directly. The names of the people who own the land are on the deed.

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)	Upon death of one owner, property automatically transfers to surviving joint owner(s).	<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)	Ownership by two spouses, with right of survivorship; so, like 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 death of one owner, that owner's interest passes by will.</li> <li>• Owners may own different fractional interests.</li> </ul>	<ul style="list-style-type: none"> <li>• Unless understood by owners, may surprise survivor that decedent's interest passes by will.</li> <li>• No liability protection during owner's life.</li> </ul>

## DIRECT OWNERSHIP

Direct ownerships are those in which a person or persons own the land directly. The names of the people who own the land are on the deed.

Direct ownerships 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. Following are some examples of direct ownership, along with short descriptions of how land owned in these forms is passed on:

- **One individual owner.** Ownership of the land is by a single person, whose name is listed on the deed. Upon the death of the owner, the land is transferred according to the terms of his or her will.
- **Joint tenant with right of survivorship.** Ownership of the land is by two or more persons, 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 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 will.
- **Tenants in common.** Ownership of the land is by two or more persons, which 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, creating exponentially larger and more complicated ownerships as each owner's share gets passed on to multiple heirs. As a result, making decisions about the land can become extremely difficult.

**The various types of land ownership can be divided into two types: direct and indirect.**





## ***Land Ownership Agreements for Direct Forms of Ownership***

Land ownership brings with it many benefits (recreational use, income from forest management) and responsibilities (taxes, maintenance). These benefits and responsibilities can be complicated when there are multiple owners in a direct form of ownership. To reduce the likelihood of disputes, landowners who co-own land may want to consider a land ownership agreement. A land ownership agreement is a contract between two or more persons who own a piece of property together. The agreement typically describes each party's

- right to use the land
- obligation to pay taxes
- responsibilities for maintenance of the property
- entitlement to profits
- transfer rights in the property.

A land ownership agreement can outline the rights and responsibilities of owners in an effort to avoid conflict and increase the enjoyment of ownership. An ownership agreement can be a very good way for landowners to establish a workable solution for owning land together and can be used in combination with the forms of direct ownership that result in multiple owners. It can be a legal document drafted by an attorney or something simple that documents how a property is to be used as well as expectations for sharing costs and benefits in order to avoid disagreements over time.

**FOR A DESCRIPTION OF DIRECT OWNERSHIPS, SEE PAGE 14.**

## ***Trust vs. Land Trust***

It is common for people to confuse a trust and a land trust. A trust is a legal entity you create to achieve your estate planning goals, whereas a land trust is a nonprofit organization that helps landowners reach their conservation goals. A trust does not protect your land unless provisions are specifically spelled out in it.

**To find a land trust working in your town, visit [MassWoods.org](http://MassWoods.org).**





**Indirect ownerships are those in which land is owned by a legal entity rather than by a person.**

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.</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.</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 existence of trust.</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 likely 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 member(s) and manager(s).</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>

## INDIRECT OWNERSHIP

Indirect ownerships are those in which land is owned by a legal entity rather than by a person.

Indirect ownerships can be more complex to set up, but they do bring with them opportunities to protect individuals from liability, as well as the ability to gradually change or transfer the ownership, which can offer important tax benefits. Following is a list of some of the most common indirect forms of land ownership that families can use to achieve their goals:

- **Limited partnership.** A limited partnership 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 partner(s) agree to maintain it.
- **Trust.** There are many kinds of trusts and 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 or who will 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. Other 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.

Massachusetts limits the number of years that a trust can stay viable, so while trusts can offer a good option for families, they are not a permanent solution. The trustee has a responsibility to protect the financial value of the assets in the trust, which may make it difficult to permanently conserve land in a trust, since permanent conservation naturally reduces the value of the land. If permanent land conservation is a goal now or in the future, landowners should include that goal as part of the organizing principle of the trust.

- **Limited liability company (LLC).** When choosing to use an LLC, land ownership is transferred to the LLC, and the rules that run it are put into an operating agreement and agreed to by all initial members. The LLC is governed by a manager for the benefit of all members. Shares of ownership can be transferred between members by gift or by sale, as determined in the operating agreement. The LLC can be used

# Thompson Family Leverett, Massachusetts

**TOOLS USED:** TIMBER HARVESTS • FAMILY TRUST • CHAPTER 61  
**PROFESSIONALS:** FORESTER • ESTATE PLANNING ATTORNEY

**K**eeping land in the family is a common goal for many landowners, but how do you actually pay for the long-term ownership and maintenance costs associated with the land?

The Thompson family has found a solution that works for them and their family retreat on 45 acres of woodlands in Leverett. Now owned by the fourth generation, the property is the site of the family's 4th of July reunion, annual work parties, and lots of family vacations. As the property was about to be transferred from 3 members of one generation to the 12 members of the next, the family grappled with the challenge of keeping the property that they all loved affordable and accessible to future generations. As a solution, they set up a trust that owns the farmhouse and land. Each of the three branches of the family has a one-third interest in the trust and is represented by one trustee. Bills for taxes, insurance, and mowing are split in thirds. The trust was set up so that individual family members



Thompson family

could opt out but could never be bought out, in order to keep participation affordable for the remaining members.

A bad storm a few years ago knocked down lots of trees on the property, which prompted the family to consider a more active approach to managing their woodlands. With the help of a consulting forester, they enrolled their land in Chapter 61, reducing their property tax burden; created a forest management plan; and began harvesting timber from the land. The income from the timber harvests went right back into maintaining and improving the property, with projects such as a new porch. The harvests also cleared out some of the forest understory, making walking in the woods much easier and enjoyable, and created logging roads that the family now maintains for hiking trails. The family agrees that the timber harvests are a form of long-term land stewardship, which is providing income and helping them maintain this special place long into the future.

**AS THE PROPERTY WAS ABOUT TO BE TRANSFERRED FROM 3 MEMBERS OF ONE GENERATION TO THE 12 MEMBERS OF THE NEXT, THE FAMILY GRAPPLED WITH THE CHALLENGE OF KEEPING THE PROPERTY THAT THEY ALL LOVED AFFORDABLE AND ACCESSIBLE TO FUTURE GENERATIONS.**



Thompson family

to gradually move ownership from one person to another or between generations. This gradual transfer of ownership can help minimize taxes and provides a mechanism for accommodating the changing needs and life circumstances of members. As the name suggests, limited liability companies protect all owners from liability. Unlike trusts, LLCs can be maintained in perpetuity and amended by members over time, providing a long-term strategy for land ownership and decision making. In addition, land owned as an LLC can be put into permanent conservation. It should be noted, however, that there is an annual cost for maintaining an LLC.

## DETERMINING THE FUTURE USE OF YOUR LAND

A second important question to ask yourself is if you would like to control the future use of your land in order to ensure that some or all of it remains in its natural state. You can determine the future use of your land either temporarily or permanently. A forest management plan can help guide the stewardship of the land in the future. Current use programs are an example of a temporary option for determining future land use. Permanent land conservation can ensure that your land will never be developed or subdivided.

### LAND STEWARDSHIP ACTIVITIES

#### Forest Management Plans

Make sure to pass on to your children your knowledge of the land and its past management. Also communicate your goals for the property and how they have been implemented in the management of the land. You may also want to provide information about the people you have worked with and what programs your land may be enrolled in. If you have a formal forest management plan, share it with your family and use it as you develop your estate plan. If you develop a forest management plan after you've developed your estate plan, reference key elements from your estate plan—such as a conservation restriction—in your forest management plan. Communicating this information to your family can help them become good stewards of the land.

A **service forester** is a public employee who can help you explore your forest management options and navigate the benefits and requirements of the Chapter 61 current use programs.

To find the service forester for your town, visit [MassWoods.org](http://MassWoods.org).

If your family does not already have one, an important professional to contact regarding your land's management is a forester. A forester is a professional who can help you evaluate your land management options, including determining the value of your timber for a land appraisal. To find a forester working in your town, visit [MassWoods.org](http://MassWoods.org).

### TEMPORARY LAND USE OPTIONS

#### Chapter 61 Current Use Tax Programs

Paying the property taxes on the land may be an issue for your family. The Chapter 61 (Ch. 61) programs (Ch. 61–Forestry, Ch. 61A–Agriculture, and Ch. 61B–Open Space and Recreation) 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 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 service forester can be a good way to learn more about current use tax programs. To learn more about the Ch. 61 current use tax programs and to find the service forester working in your town, visit [MassWoods.org](http://MassWoods.org).

### PERMANENT LAND USE OPTIONS

#### Conservation Restriction

A conservation restriction (CR) 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 restriction is a flexible tool that can be placed on all or designated parts of your land, allowing you to reserve house lots in order to provide financial value or housing options for your family. Some CRs allow public access, whereas others do not; this usually depends on your preference, which organization you work with, and whether you are receiving funds for your CR.

A CR can be sold if the land has exceptional ecological or historical value. Alternatively, it can be donated, providing the landowner with a tax deduction for a charitable gift. Since the land can no longer be developed, a CR lowers its value, which can help lower your taxable estate, possibly even dropping it below the estate tax threshold. Donating a conservation restriction can also reduce 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. Both sold and donated CRs often come with costs for surveys, appraisals, and stewardship donations to ensure that the terms of the conservation restriction are monitored and enforced in perpetuity.

Your heirs can donate a CR within nine months of your death, which can provide tax benefits to your estate, meeting

your goal of keeping some or all of your land in its natural, undeveloped state and providing financial benefits to your heirs. As previously discussed, before you include the donation of a CR in your will, be sure to meet with the conservation organization to be sure it is willing to accept the CR.

### Donating or Selling Land

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. Donations of land may provide significant tax advantages as a charitable gift.

### Bargain Sale

Landowners can sell their land or conservation restriction for a price lower than its fair market value. The difference between the appraised market value and the sale price to a qualified conservation organization, such as a land trust or a state conservation agency, is considered a tax-deductible charitable contribution, providing some income and potentially some tax benefits.

### Bequest

A donation of land or a CR through your will is 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 do not need to sell it during your lifetime.

### Life Estate

Landowners sometimes negotiate a gift or sale of the 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. 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 is based on the donor's age. Landowners are responsible for upkeep and all management costs during their lifetime.

### Limited Development

Limited development is an option that protects the majority of the land while a small portion is sold or maintained by the landowner for future development. In a limited development scenario, the areas with the greatest conservation value are protected through one of the tools



istockphoto/Chris Schmidt

### **How Much Is This Going to Cost?**

Estate planning is not cheap; however, your estate will likely incur costs if you do nothing. Estate planning can also help save money by reducing taxes. By planning in advance, you will have peace of mind in knowing that your land will be taken care of in the future. Costs go up the more indecisive you are and the more complex the solutions needed, so try to come to as much of a decision as possible before bringing in more costly experts, like attorneys.

Ask friends and neighbors for referrals, and don't be shy about asking professionals for an estimate before beginning to work with them.

previously discussed, while other less sensitive areas of the land are set aside for future development.

## FINDING A CONSERVATION ORGANIZATION

A conservation organization can help you explore these permanent land protection options. Many land conservation organizations seem exactly alike at first glance, but their missions and land management philosophies can vary greatly. State conservation agencies or land trusts achieve their mission, in part, through land conservation. Your property's location, size, and natural resources all help determine which conservation organizations may be interested in working with you to conserve your land. If you do decide to move forward with land conservation, it is important that the organization you work with shares your goals and personal philosophy about land and land management. To find a land trust or public conservation agency working in your town, visit [MassWoods.org](http://MassWoods.org).



## Options for Keeping Some or All of Your Land in Its Natural State

	Description	Tax Implications	Duration	Maintains Your Ownership
<b>Ch. 61 Current Use Tax Programs</b>	State programs that reduce your property taxes in exchange for actively managing your forestland	Reduce property tax	Temporary (in effect until the landowner withdraws from the program or does something to disqualify the land)	Yes
<b>Conservation Restriction</b>	A voluntary agreement that extinguishes 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. The value of the donation may also qualify for the MA Conservation Land Tax Credit (see page 26). If sold, you may incur capital gains taxes.	Permanent	Yes
<b>Donating or Selling Land</b>	Donating your land to a land trust, a conservation agency, or your community	Provides a charitable deduction for income taxes, and lowers the taxable value of your estate. The value of the donation may also qualify for the MA Conservation Land Tax Credit (see page 26).	Permanent	No
<b>Bargain Sale</b>	The sale of your land or conservation restriction for a price lower than its fair market value	Income from the sale is taxable, but the difference between the appraised market value and the sale price is a charitable deduction if sold to a land trust or government agency. The value of the donation may also qualify for the MA Conservation Land Tax Credit (see page 26).	Permanent	No
<b>Bequest</b>	Donating your land or a conservation restriction through your will	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
<b>Limited Development</b>	Carving off a portion of the property for sale or development and conserving the rest	May create both capital gains for the sale and charitable deductions for the conservation portion	Permanent	No

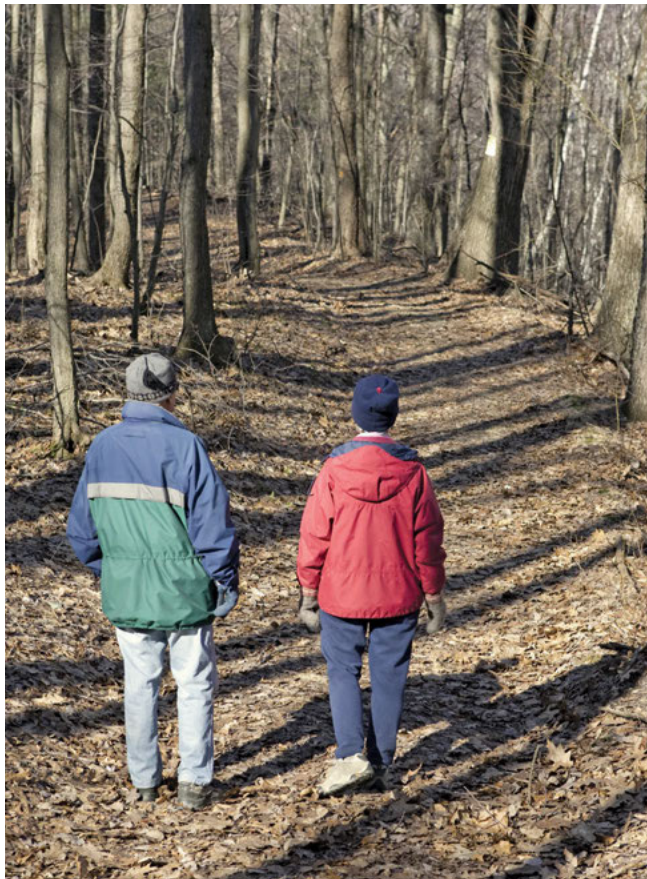
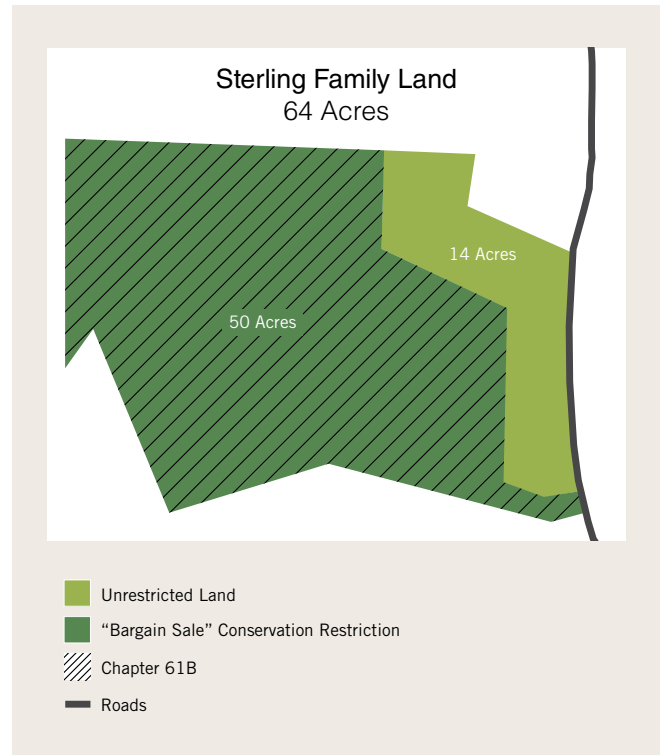
# Sterling Family Western Massachusetts

**TOOLS USED:** CHAPTER 61B • BARGAIN SALE OF A CONSERVATION RESTRICTION • RESERVING FUTURE BUILDING LOTS  
**PROFESSIONALS:** ESTATE PLANNING ATTORNEY • LAND TRUST

**W**hen Mrs. Sterling and her three cousins inherited 64 acres of mostly wooded land in Western Massachusetts, she knew she wanted to see the land preserved in its natural state rather than sold for house lots.

To make that wish a reality, she worked with her cousins to buy them out via a family mortgage, but with that added monthly cost, she was having trouble making ends meet. Her attorney recommended that she contact the local Minnechaug Land Trust, which was very interested in seeing her land conserved.

First, the land trust advised her to enroll her land in Chapter 61B to reduce her property tax burden. Second, the land trust inventoried the land and determined that 50 acres were valuable for habitat conservation. The land trust proposed purchasing a conservation restriction on the 50 acres, which would keep the land in Mrs. Sterling’s ownership but



Norm Eggert

eliminate the development potential of the land. The remaining 14 acres, containing most of the road frontage, remained untouched and available for future building lots. Mrs. Sterling hired an appraiser to conduct a conservation appraisal to document the market value of the land for both development and conservation purposes. The difference in the values, and thus the CR price, was appraised at \$165,000.

The land trust applied to a state grant program for land conservation to help pay the cost of the purchase of a CR. The land trust managed to raise \$120,000 to purchase the CR. Mrs. Sterling agreed to sell the CR through a bargain sale at the \$120,000 price. The difference—\$45,000—was a charitable donation to the land trust, which helped offset Mrs. Sterling’s capital gains tax from the sale of the CR. Mrs. Sterling will continue to own all the land and manage it as she sees fit, knowing that the majority of the land will remain in its natural condition forever.



# Bill Rose

Phillipston, Massachusetts

**TOOLS USED:** SALE OF AN AGRICULTURAL PRESERVATION RESTRICTION • DONATION OF A CONSERVATION RESTRICTION  
MAINTAINING A LARGE UNRESTRICTED PARCEL

**PROFESSIONALS:** TAX ATTORNEY • LAND TRUST

**One of the principal goals of estate planning is to come up with a strategy to reduce taxes associated with conserving and transferring land.**

When Bill and Sue Rose took over management of the 241-acre Red Apple Farm in Phillipston, Bill was following in the footsteps of his father and grandfather, who had also raised apples on the land. While under Bill's management, the family business was converted from a wholesale operation to a direct-marketing farm, selling retail and pick-your-own apples, peaches, blueberries, and pumpkins.

Bill wanted to honor the hard work of his father and grandfather and decided to permanently conserve the farmland. He also wanted to make sure his son—who was interested in continuing the farm—could become the next owner of the land without a mortgage or a big tax burden. He contacted state conservation agencies and found that the MA Department of Agricultural Resources was interested in protecting the orchards and fields. The state agency bought the development rights from



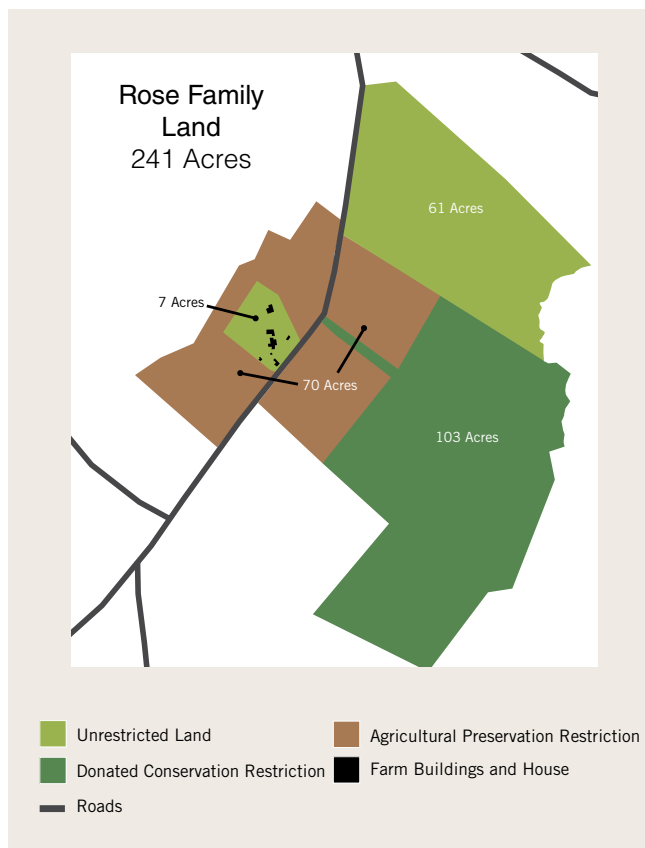
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**“YOU’LL NEED ADVICE FROM QUALIFIED PROFESSIONALS TO HELP YOU, BUT IT IS MONEY WELL SPENT.”**

Bill and placed a permanent agricultural preservation restriction (APR, a conservation restriction for farmland) on 70 acres of the orchard, excluding a 7-acre area around the house and barns. But the state was unwilling to protect a 103-acre woodland surrounding the orchard. The woodland parcel had an approved gravel permit, which increased its value.

It turned out that the funds Bill received from the APR resulted in a substantial capital gains tax. A tax attorney helped Bill find a solution for dealing with the taxes while protecting the remaining land. Bill made a donation of a conservation restriction to a local land trust on the 103-acre woodland. This donation was considered a charitable gift for tax purposes and allowed him to receive a substantial income tax deduction, which offset the capital gains tax incurred by the APR. The land under the APR was transferred to Bill's son Al and daughter-in-law Nancy, who continue to run the farm, and the woodland is used by Bill for forestry as well as hiking and hunting.

Bill advises those who care about the future of their land to consider a conservation restriction: “Putting a conservation restriction on your land will take longer than you think it will. But first you need to make sure a CR will fit into your family's financial situation. You'll need advice from qualified professionals to help you, but it is money well spent.”



# Hoag Family Medway, Massachusetts

**TOOLS USED:** DONATION OF A CONSERVATION RESTRICTION • RESERVED LIFE ESTATE • CHAPTER 61  
**PROFESSIONALS:** FORESTER • ESTATE PLANNING ATTORNEY • LAND TRUST

**S**ometimes you can get everything you want. A patch of woods in Medway has been a joy for Dave and Grace Hoag to own and explore on a regular basis, and they wanted to make sure it stayed undeveloped and available for quiet hikes in the future.

The Hoags utilized the Forest Stewardship Program to create a long-term management plan for the woods and enrolled in Chapter 61 to reduce their property tax burden. Dave then decided to protect his land with the help of a local land trust.

The Hoags first subdivided their land to carve out their house and surrounding lot, leaving 15.5 acres of fields, woods, and meadows in the midst of the quickly suburbanizing town. They then placed a conservation restriction on the land, extinguishing their right to develop the property in the future. An appraisal documented the development value of the land and the reduced value due to the CR, which provided the Hoags with a significant income tax reduction. They also worked

with the land trust to transfer the land to the organization outright upon their death. Called a reserved life estate, this arrangement will keep the land in their ownership until they pass away, after which time it will be owned by the land trust and open to the public. The Hoags' children, who will inherit their parents' house, were happy with their parents' choice to donate the land that they loved so much.



(Stockphoto/David Phillips)



# Taxes

It has been said that the only sure things in life are death and taxes; estate planning is about preparing for both. Land is likely one of the most valuable assets in your estate. And due to the historic rise in real estate values, your land's value may be greater than you think.

The amount and types of taxes your estate may face depend on the value of your land, the form of ownership your land is held in, and how your assets—including your land—are transferred to your family. The goal, of course, 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.

A **certified public accountant (CPA)** is a licensed professional who understands tax codes and specializes in helping individuals prepare tax returns. A CPA can develop and evaluate strategies designed to fulfill your goals while minimizing taxes. To find a tax professional, visit [MassWoods.org](http://MassWoods.org).

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. The 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. Speak with a CPA or a tax attorney who is familiar with land and its conservation for information specific to your situation.

## TAX CONSIDERATIONS

### FEDERAL AND STATE ESTATE TAXES

These are taxes on your estate if its value exceeds a certain threshold. Federal and state tax thresholds often change from year to year. One way to lower the value of your estate is through land conservation tools.

### GIFT TAXES

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 left in your estate, exceed that exclusion, the donor generally pays gift tax on the excess amount. 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 value that your land and other assets have appreciated to 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 in your land's value of \$150,000. Placing a conservation restriction on your land is one effective way to lower its sale price and therefore the capital gain from the sale of your property. However, the sale of a conservation restriction (see page 19) or a bargain sale (see page 20) can also trigger capital gains liability.

### FEDERAL INCOME TAXES

This tax is based on your income. Federal income tax can be reduced through a bargain sale or donation of land or of a conservation restriction by providing you with a charitable donation.

### PROPERTY TAXES

As land values and assessments increase, local property tax burdens can be difficult for families to meet. Conservation restrictions and current use tax programs provide opportunities to reduce property taxes on your land.

## **Massachusetts Conservation Land Tax Credit**

If you donate a conservation restriction or land with certain natural resource values, or if you sell a CR or land that has those same natural resource values at below fair market value (bargain sale), you can apply for a Massachusetts Conservation Land Tax Credit. The application must be submitted before the donation is made. A land trust or another qualified entity can guide you through the process.

This income tax credit

- provides tax credits for the value of the donation, limited to 50% of the donated value, capped at \$75,000;
- applies to your state tax liability during the year of the donation. If your tax credit is larger than your tax liability, the state will issue a check for the remainder of the approved credit;
- can be utilized in addition to claiming the federal income tax deduction.

Example: A landowner donates a CR worth \$140,000 and owes \$5,000 in state taxes that year. The landowner is approved for a \$70,000 credit (i.e., 50% of the donation capped at \$75,000). The landowner would be responsible for paying \$0 in state taxes that year, would be issued a check for the remaining \$65,000, and could also claim federal income tax deductions for the donation.

See the Kingsbury and Williams case study and the Bailey case study for real-life examples of landowners who used the Massachusetts Conservation Land Tax Credit. **To learn more about the Massachusetts Conservation Land Tax Credit, contact your local land trust, which you can find at [MassWoods.org](http://MassWoods.org).**



Norm Eggert

# Sisters Grace Kingsbury and Alice Williams

Chesterfield, Massachusetts

**TOOLS USED:** MASSACHUSETTS CONSERVATION LAND TAX CREDIT  
DONATION OF A CONSERVATION RESTRICTION • FEDERAL INCOME TAX DEDUCTION  
RESERVING A FUTURE BUILDING LOT

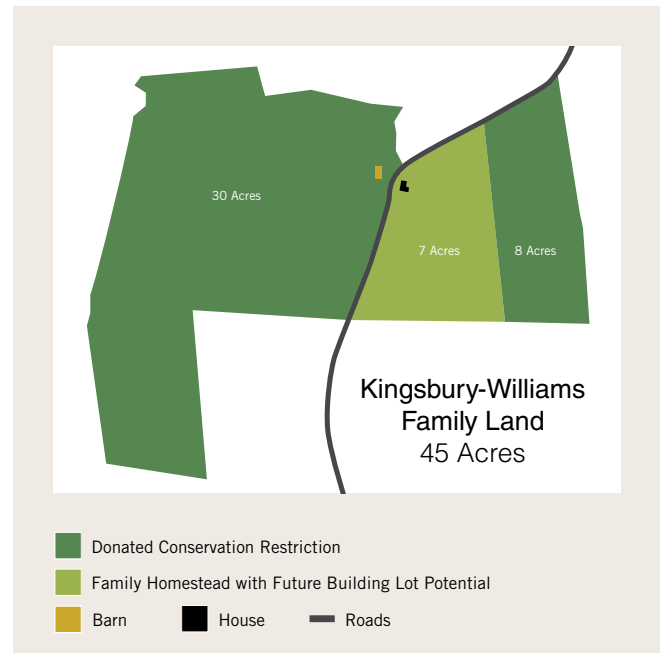
**PROFESSIONALS:** LAND TRUST

**C**onserving your land often requires spending a few thousand dollars in real estate transaction costs and other fees. But for many landowners who donate all or part of the value of their land or conservation restriction, an innovative tax credit program can help cover these costs and still leave some money in your pocket.

Sisters Grace Kingsbury and Alice Williams inherited 45 acres of land in rural Chesterfield, Massachusetts, from their parents. The sisters share a strong attachment to the land, which had been in the family for nearly 150 years. Growing up, they had spent a lot of time at the farm with their grandparents, picking berries and vegetables, collecting eggs, helping in the garden, and playing in the brook. Later, their children enjoyed spending time at the farm with their grandparents. In the past several years, the sisters' families would vacation at the old farmhouse on the property, overlooking 10 acres of hay fields and offering a spectacular view of the hills surrounding the Westfield River.

Grace and Alice hoped their land would remain in its natural state forever, but they weren't sure what they needed to do to ensure this. Then they learned about the Hilltown Land Trust, a local nonprofit conservation organization. The land trust helped them choose a path forward.

The sisters wished to place a conservation restriction on the land, which would enable them to own the property while preventing future development on the fields and woodlands. They were open to donating the CR to the Hilltown Land Trust, but struggled to pay the several thousands of dollars in transaction costs associated with the project—costs associated with surveys, an appraisal, legal fees, and recording fees. The Hilltown Land Trust also requested a small endowment from the landowners so that the organization would have the resources to steward and monitor the conservation restriction in perpetuity. As a way of covering these expenses, the Hilltown Land Trust worked with Grace and Alice to apply for a Massachusetts Conservation Land Tax Credit, which can provide landowners up to \$75,000 for donating the value of land or a conservation restriction. Because their land was identified as having important wildlife habitat and



exceptional water resources by the Massachusetts Natural Heritage and Endangered Species Program, they qualified for the tax credit. They also qualified for a federal income tax deduction for their conservation donation. The tax credit covered many of the transaction and endowment costs associated with the project and left some funds for the families as well.

Named the Damon-Hunter Conservation Area to honor their parents, grandparents, and great grandparents, the conservation restriction covers 38 acres of their family homestead, leaving the area around the summer home free of the CR, as well as an additional 7 acres to allow for a future building lot. "This property has been in our mother's family since 1864 and is very special to our family. We wish to preserve it in a natural state, in order to maintain its natural and scenic values and to benefit the wildlife habitat that it supports. This is exactly what Mother would have wanted, and it is what her family before her would have wanted," said Alice, who now lives in Connecticut. Now that the land's future is secure, Grace has transferred her portion of the property to her sister Alice, whose son Audley and his wife Angel plan to move to the property to start a new farming enterprise.

# Gordon Family Central Massachusetts

**TOOLS USED:** FAMILY TRUST FOR INTERGENERATIONAL TRANSFER • SALE OF LAND TO A STATE CONSERVATION AGENCY  
**PROFESSIONALS:** STATE CONSERVATION ORGANIZATION • APPRAISER • ESTATE PLANNING ATTORNEY

**A** good estate planning attorney can be worth his or her weight in gold, a lesson a family in Central Massachusetts learned well.

As they approached their late 70s, Mr. and Mrs. Gordon were toying with the idea of downsizing from their 45-acre farm. Though they did not have a lot of savings, they and their three grown children did not want to sell the farm and see the land developed. A neighbor had recently sold some land to the MA Department of Conservation and Recreation (DCR) for watershed protection, and they wondered if that was an option for them as well.

They began discussions with DCR, which had an appraisal done on about 40 acres, which came in at \$300,000. The Gordons then had the house and barn and their remaining 5 acres appraised separately, which came in at \$150,000. The opportunity to receive money out of the land, while seeing that it remain forever in its present wooded condition, was very attractive, but they also wanted to pass the house and land on to their children without major tax implications.

**THE GORDONS WERE ABLE TO PASS ON THEIR LAND TO THEIR CHILDREN EQUITABLY, CONSERVE THE LAND THEY LOVED, AND AVOID A POTENTIALLY SIGNIFICANT TAX BURDEN.**

With the help of an attorney with experience in estate planning, the Gordons' three children established a trust, with one child as trustee. The Gordons entered into a contract with the trustee under which (1) they agreed to sell their entire property to the trust for \$450,000; (2) they agreed to lend the trust the entire purchase price, with the loan secured by a mortgage on the house and land; and (3) the trustee agreed that the Gordons could continue to live in the house rent-free for one year. Since no money changed hands and the Gordons did not have to move out, this transaction was completed quickly and easily. Although the Gordons had purchased the property 50 years prior for \$5,000, there was no capital gains tax on this sale because of the exemption for the sale of their principal residence.



Jackie Cooper

A couple of weeks later, the trust sold the 40 acres to the DCR for \$300,000. Again, there was no capital gains tax on this sale because the trust sold the land for the same price it had purchased it at. The trustee then paid the \$300,000 to the Gordons, reducing the amount of the loan from \$450,000 to \$150,000.

During the next year, the Gordons forgave the \$150,000 loan to their children's trust (which required filing a gift tax return, but no tax was due) and entered into a lease with the trust at a low but reasonable rent, enough to cover the trust's expenses while keeping down its income tax liability. Not too long afterward, Mr. Gordon passed away and Mrs. Gordon moved to an assisted living facility. Through their trust, the children own the house, and one child is likely buying out the others and moving in. Though these transactions were complicated and did require a great deal of professional assistance, the Gordons were able to pass on their land to their children equitably, conserve the land they loved, and avoid a potentially significant tax burden.

# Peter and Ellie Johnson

Orleans, Massachusetts

**TOOLS USED:** DONATION OF A CONSERVATION RESTRICTION • RESERVING ONE BUILDING LOT  
**PROFESSIONALS:** LAND TRUST • APPRAISER • ACCOUNTANT • ESTATE PLANNING ATTORNEY

**E**leanor Rogers owned 10 acres on Little Pleasant Bay in the Cape Cod town of Orleans and planned to leave the property to her son, daughter, and four grandchildren.

The family loved walking the land as well as kayaking in the bay. Eleanor's daughter Ellie Johnson was interested in conserving the property and had some exposure to land conservation from her involvement with a campaign to prevent development on Mount Holyoke in Western Massachusetts, so she knew to get in touch with a local land trust. On the land trust's recommendation, the family had the land appraised by a qualified independent appraiser to find out the value of the land. Although the family knew that waterfront land on the Cape was valuable, they were still stunned when they saw the land's appraised value and the fact that eight houses could be built on the land.



Sandy Stewart

Because of the land's high value, the taxes that would come with the transfer of land to the heirs would also be extremely high. In addition, the property taxes for the land continued to increase every year and were becoming a financial burden.

The family decided to have a meeting to talk about the future of the land. They walked the property and came to the conclusion that their land could better serve the bay, the town, and their family if left in its natural state.

Around this time, the family was closing out their

interest in a family business, which carried some significant capital gains taxes to deal with. After consultation with the land trust, the family attorney, and an accountant, the family came up with a solution that met their goals. They decided to donate a conservation restriction on the majority of the land, except for one house lot, to the Orleans Conservation Trust. The CR reduced the amount of estate taxes resulting from the inheritance of the land, and the family was able to use the CR donation as a charitable gift to offset all the capital gains taxes they would have had to pay for closing out their interest in the family business. Also, the property taxes for the land in the CR were reduced by 90 percent.

Two things surprised the family after conserving the land. First, the property taxes on the one house lot they retained without a CR went up. Since this house lot was adjacent to conservation land, it now had even greater value. The second surprise was an investigation by the IRS, which initially questioned the value of the CR donation. However, since the family had worked closely with a professional estate planning team (led by Mark Robinson of the Compact of Cape Cod Conservation Trusts) and followed their advice—using a qualified independent appraiser and clearly documenting the public benefits of the charitable gift of the CR—the IRS inquiry was resolved without incident.

In the words of Peter Johnson, Ellie's husband, "We are very appreciative of Mark Robinson's careful stewardship in guiding our family through this journey.

We now have this beautiful piece of property that we continue to enjoy. Conserving the land was a nice coming together of the family. We are so happy that, with all the fun we've had on the land as a family, it will be passed on to future generations. It feels good that we not only prevented the degradation of the bay's water quality, but actually helped in our small way to protect the Cape's environment. When we are out kayaking, I love looking back and seeing the green trees on our land standing out among the surrounding houses."

# Coolidge Family

Petersham, Massachusetts

**TOOLS USED:** NOMINEE TRUST

**PROFESSIONALS:** ESTATE PLANNING ATTORNEY

**Y**ou never really know what is around the corner. Horace and Doris Coolidge lived in a farmhouse on 230 acres in Petersham, Massachusetts, that had been in the family since the 1930s. As Horace entered his 80s, he and Doris wanted above all to make sure the farm remained in the family. They were not interested in permanently conserving the land because they did not want to eliminate any options for their son, Curt, or his two sons in the future. Horace and Doris knew that Curt and his family loved and appreciated the land and were not going to develop it.

But the Coolidges needed to begin transferring the house and land to Curt and his wife, Kathy, to avoid the Massachusetts estate tax. They turned to their attorney, Liz Sillin, who helped them utilize a tool that is relatively unique to Massachusetts—a nominee trust. A nominee trust is not a true trust; rather, it is an agency relationship, which means it allows for the transfer of interests of property, but a new deed does not need to be created with each transfer.

## THANKS TO THE NOMINEE TRUST, THIS WAS A VERY SIMPLE PROCESS THAT LOWERED THE VALUE OF THE ASSETS THAT HORACE AND DORIS OWNED.

Horace and Doris liked that the details of the nominee trust, such as its beneficiaries, were not required to be disclosed, and when they died, their estate did not have to pass through probate. In a nominee trust, the trustee acts at the direction of the beneficiaries, which also sets it apart from traditional trusts. There are no annual fees or other costs for maintaining the nominee trust.

In establishing the trust, Horace and Doris needed to get their house and land appraised, which cost approximately \$5,000. Though expensive, the appraisal was essential for establishing the value of the property and thus the value of each interest that would be transferred to Curt and Kathy. Horace and Doris began gradually gifting interests in the trust at the maximum annual exclusion for gifts. Thanks to the nominee trust, this was a very simple process



Horace and Doris Coolidge

that lowered the value of the assets that Horace and Doris owned.

Horace fell ill a couple of years later. When it became clear that he would not recover from his illness, Curt and Kathy arranged to have the remainder of his interests transferred to them. By not transferring his assets automatically to Doris, they kept Doris's estate tax burden low, avoided probate, and did not need to file an estate tax return.

Two years later, Doris died suddenly. Thankfully, her assets were below both Massachusetts and the U.S. estate tax threshold, and all her remaining interests in the nominee trust were transferred to Curt and Kathy without triggering any taxes. At this time in their lives, Curt and Kathy would have struggled to pay any taxes and could instead use Horace and Doris's remaining assets to repair the farmhouse and begin the process of turning the land into an active farm again. The property remains in the nominee trust, and Curt and Kathy plan to use the same process to begin transferring ownership to their two sons in the near future.



# Bailey Family

Haverhill, Massachusetts

**TOOLS USED:** CHAPTER 61 • DONATION OF CR • MA CONSERVATION LAND TAX CREDIT

**PROFESSIONAL:** LAND TRUST

**T**he Baileys enrolled their land in Chapter 61 for many years. Their decision to go beyond the temporary protection of Chapter 61 by placing a conservation restriction on their land gave them the peace of mind that the land would never be developed. Following the advice of a trusted local land trust, the Baileys staged their land conservation project over three years to maximize the benefit of the Massachusetts Conservation Land Tax Credit.

For over 50 years, Janis and Perley Bailey made their home on 87 acres of rolling fields and woodlands in Haverhill. During this time, they witnessed much of the surrounding rural landscape lost to development. As the value of their land rose along with the increase in residential development in their neighborhood, they enrolled their land in Chapter 61 to reduce their property tax burden.

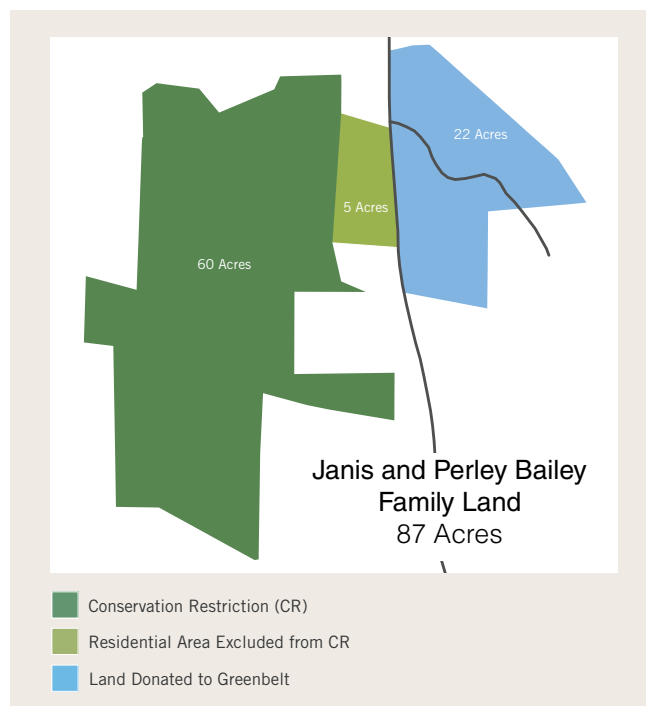
Chapter 61 enrollment created some significant hurdles to developing their land, such as the requirements to pay back some property taxes and to give the town the right to purchase their land if they ever chose to develop while in the program. But since the Baileys never intended to change the land use, they accepted these trade-offs in return for significantly lower property taxes.

While Chapter 61 was a perfect solution for many landowners, the Baileys were looking for something more permanent. Their dream was to keep the land the way they had always known and loved it, honoring its historic use as a farm. They wanted to ensure that future generations could enjoy the unspoiled views of forests, hills, and fields that are so iconic to their part of the Merrimack River valley.

They reached out to Greenbelt, a land trust serving Essex County, to find out about their options. After learning about the Baileys' goals for the land, Greenbelt advised them to conserve their land in two phases to maximize the



Adrian Scholtes



Massachusetts Conservation Land Tax Credit. This program gives qualifying landowners a refundable state income tax credit of up to 50% of the value of donated land, up to \$75,000. And when the landowner's state income tax liability is less than \$75,000, the remaining credit is paid out in cash. After three years, landowners are again eligible for the credit.

In 2012, the Baileys donated a CR to Greenbelt on 60 acres, keeping out five acres around their house and barns. As with Chapter 61, the CR allowed them to manage their woods and fields as they always had. Three years later, the Baileys benefited from the tax credit again when they donated 22 acres they owned across the street to create a new public conservation area where residents could enjoy walks through the woods and access to Chadwick Pond.

As the late Perley Bailey said after conserving the land, "I didn't want to see it built up. It was under Chapter 61 and 61A. But when somebody buys [the land,] they can break that and then they can do whatever they want. This way, it's gonna stay this way."

# Kate Kerivan

Ashfield, Massachusetts

**TOOLS USED:** CHAPTER 61 • RETAIN 5 ACRES

SALE OF BUSINESS AND LAND TO A BUYER WITH SIMILAR GOALS FOR THE LAND

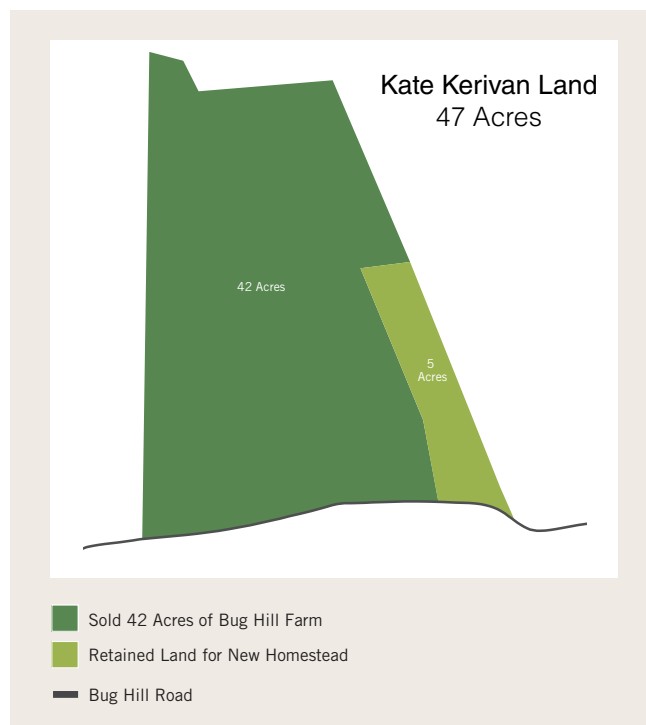
**PROFESSIONALS:** AGRICULTURAL CONSULTANT • ESTATE PLANNING ATTORNEY

**K**ate Kerivan built a successful business from scratch on 47 acres of land. When the time came to sell the business and the land, she pulled together a team of experts to help her map out a way forward. After much patience and persistence, she arrived at a great outcome for her farm enterprise and the land she loved.

In 2005, Kate decided to change careers from running a bed-and-breakfast in New Hampshire to a new venture working the land. She purchased 47 acres in Ashfield, Massachusetts, and enrolled the land in Chapter 61A to reduce the property tax burden. She wisely spent some time understanding the resources of the property and noticed incredible wild blueberry and black currant patches. Taking her lead from the land, she created Bug Hill Farm, which specializes in growing wild and cultivated berries and producing berry cordials, sauces, and spreads. During her years farming, she accessed a grant from the Natural Resource Conservation Service to help her manage the land to support beneficial insects and birds and to expand the berry fields.

After ten years of success, Kate was ready for a change from the all-encompassing work on the farm. She had developed a real love for the property after working so closely with the land. Kate hoped to transfer the land and the business to someone with her same philosophy of working with nature and producing products organically. Kate was worried that if things went wrong, a future owner might give up farming, close the farm business, and use the buildings and land only as a residence.

Kate started looking for options to sell her land to someone with a similar vision. She found Land For Good, a nonprofit that specializes in farm succession planning. The experts at Land For Good helped Kate clarify her goals and create a transition plan for the land and business. It was clear she needed an estate planning attorney who understood farm businesses as part of her advising team. She attended an event sponsored by the Conservation Law Foundation's Legal Food Hub, which matched farmers with attorneys providing legal advice. There she made a great connection with an attorney who had a farm background himself, and he became instrumental in moving her project forward.



By this point, Kate knew she did not want to leave her land entirely. So she split off 5 acres for herself—enough space for gardens and a future house—and put the remaining 42 acres and the business up for sale. Many people were interested. Kate took her time, interviewed several people, and turned down offers from those who didn't seem right for the project. Her patience paid off when a couple who shared her passion for the land expressed interest and ultimately purchased the 42 acres along with the Bug Hill Farm business. The proceeds of the sale helped Kate build her dream house on the 5 acres next to the farm.

Today, she still gets to snowshoe and walk the trails on her farm while offering encouragement and advice to the new owners, who continue to operate Bug Hill Farm. And because of her experience, Kate now helps new farmers working to find their niche in the food and farming landscape.



## ***Closing Thoughts***

The decisions (or lack of decisions) you make about your land will have financial and personal impacts long beyond your passing. Your land is an important but flexible asset that can be used to meet a wide variety of personal goals. Estate planning can be an intimidating and sometimes lengthy process, so don't delay—take a step today to begin your estate planning process. **The hardest step is often the first.** Formalize your wishes for your land. Don't leave the future of your land and your family's relationship to chance.

Once you have made decisions and created a plan, consider it a living document that will need to be revisited every five to ten years or upon major life changes.



## ***Resources for Massachusetts Landowners***

Visit [MassWoods.org](https://www.masswoods.org) for resources to help you protect your legacy, including

- a tool for finding an estate planning professional, land trust, public conservation organization, or forester working in your town
- *Using a Will to Pass on Your Land* publication
- land protection options
- a legacy planning web tool
- Chapter 61 current use tax program information