

YOUR LAND, YOUR WILL

Using a Will to Pass On Your Land



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For many families, land is their most valuable financial asset. And for many, there is an emotional attachment to it as well. What is the future of your land? Who will own it, and how will it be used after you are gone?

A will, sometimes called a last will and testament, is a legally binding document that states how you want your assets distributed once you have passed away. Many landowners are interested in using a will to meet their goals for their land. In order to be effective at passing your land on by way of your will, you need to ensure that the way you own your land permits you to do so and, if so, that your will is written in a way that will achieve your desired goals.

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 avoid probate, control the use of your land, or help you minimize taxes. If these are your goals, you will need to use other estate planning tools.

Land is a unique type of asset, and not all estate planning attorneys have expertise in dealing with it. When developing a will as part of an estate plan, it is recommended that you work with an attorney who has experience with land and the conservation tools available to help you meet your financial and personal goals. To find an attorney with land conservation experience, visit www.MassWoods.org.

A will can help ensure you reach your goals and give you peace of mind. Don't wait. The time to prepare one is now. 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.



First, look at the deed

Your deed describes your land, who owns it, and how it is owned. If the deed states that you (and only you) own the land, you can pass it by way of your will. Likewise, if the deed states that you own the land as a “tenant in common,” then your ownership share can pass by

way of your will. On the other hand, if you own the land “jointly” or as a “tenant by the entirety,” then the other owner(s) will receive your share at your death, regardless of what you specify in your will. If the other owner(s) die before you do, then you can pass the land by way of your will. If the deed indicates that the land is held by a trust or an entity, then you need to speak with your attorney about how you can pass on your interest in the land.

If you do not know how your land is held, you can find the information on the title to your land. The title can usually be found at www.masslandrecords.com. A local land trust or forester can also help you find this information. To locate a land trust or forester working in your community, go to www.MassWoods.org.



Include your land in your will

Major life events (marriage, birth of a child) often motivate people to undertake estate planning and prepare a will. Your will reflects your wishes with regard to the assets you own at the time you make it. It is common for people to buy land after a will has been prepared or to not include the land in the will because decisions about its future have not yet been made. If you know the details of your land ownership and that you can use a will to pass it on, be sure that your will includes provisions for doing so.

Wills may have general provisions about who should inherit your assets—for example, your spouse or your children may get everything. In such cases, your land, along with your other assets, will be passed to them in accordance with your general provisions.

If you have a special arrangement in mind or if you have something specific you want to say about your land, your will needs to say it. If you do not formalize your wishes for the land, not only could it result in hard feelings for your heirs but you take the risk that your land will not be owned by the person(s) you want and not be used in a way consistent with your wishes. Do right by yourself and your family by formalizing your wishes for the land.



and discuss your intentions. Donating your land qualifies as a charitable gift and may result in a tax reduction for your estate. Contact a tax attorney or CPA with experience in land conservation to learn about the tax implications of a charitable gift of your land.

Your will can only give away assets that are entirely yours, so if you own partial interest in the land—for example, as a tenant in common with siblings—then you can only give away your share of the ownership.

As previously noted, a will cannot override the ownership of the land as stated on your deed. Likewise, a will cannot give away assets, including land, which is part of a trust. Instead, the terms of the trust will determine how the assets within it are distributed. If your current ownership doesn't meet your needs for passing on your land, it is recommended that you meet with an estate planning attorney to learn about other options for the ownership of your land.



Description of the land

If you want your will to include special provisions tailored to your land, include a brief description of the land, such as its location and approximate acreage. Other information—such as parcel numbers, assessor's book and page, and surveys—can be provided as supplementary information.



Description of all current owners

If you own only a partial interest in the land, it is helpful if your ownership interest is stated in your will along with the names of any other owners and their ownership interest.

Beneficiaries

Your will should include the names of the individual(s) (spouse, children, siblings) or organizations (land trust, state conservation agency) that you would like to receive your land.

If you are interested in giving your land to a conservation organization, it is highly recommended that you meet with that organization

Alternate beneficiaries

Because it is possible that your beneficiaries may pass away before you, it is recommended that you list alternate beneficiaries.



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 interpret and enforce, and they may not ensure the outcome you had in mind. In addition, wills are intended only to transfer your assets according to your wishes and therefore 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 below) or giving the land to a conservation organization, such as a land trust or a state conservation agency (see “Beneficiaries”).

Keeping land undeveloped through a conservation restriction

A conservation restriction (known as a conservation easement in states other than Massachusetts) is a legal agreement that extinguishes some or all of the development rights of the land forever but allows your other rights—such as farming, forestry, and recreation—to continue, all while maintaining your ownership of the land. A conservation restriction (CR) is a flexible tool that can be placed on all or designated parts of your land, allowing you to reserve house lots to provide financial value or housing options for your family. Some CRs allow public access while others do not—it usually depends on 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 historic value or can be donated, providing the landowner with a tax deduction or credit for a charitable gift. A will can be used to donate a CR. A CR donated within nine months of your death can provide tax benefits to your estate, meeting your goal of keeping some or all of the land in its natural, undeveloped state and providing financial benefits to your heirs. A land trust can help guide you through the process of working with an independent appraiser to determine the value of your CR. As previously discussed, before you include the donation of a CR in your will, meet with the conservation organization to make sure it is willing to accept the CR. To learn more about CRs or find a land trust working in your area, visit www.MassWoods.org.

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 (CR) on it doesn't meet your goals, an informal option would be to communicate to your heirs your intention for the future of the land through a legacy letter.

A legacy letter is a letter you write to your beneficiaries that is intended to share your knowledge, beliefs, values, and hopes. A legacy letter can be attached to a will to provide additional information. Although it is not a legal document, it can be instrumental in conveying your wishes to your beneficiaries and guiding their future decisions about the land. Here are some things you might consider including in your legacy letter:

- the history of the land, including the story of how you came to own it
- the ecological, historic, and/or cultural value of the land
- your favorite memories of the land
- the 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 is to pass on your legacy to your beneficiaries in your own words.



EXAMPLE LEGACY LETTER

Dear Kate and Mary—

As you know, our family has deep ties to this land. It has been in our family for the past 100 years, and I know that you all love it as much as I do. Remember when you were kids and we used to build fairy houses, skate on the pond, and spend hours around the stream looking for frogs? I had the pleasure of watching you both grow up on this land, and I am writing this letter to explain my wishes for it once I am gone.

I also want to be sure that you know our family's history with this land, which will help explain my wishes for its future. Your grandfather purchased the land from a sheep farmer in the early 1900s. Timber from the woods was used to build the house. Your father lived here his whole life. Our first date was a picnic on the banks of the stream by the house. We loved walking around the woods and seeing wild animals. Once we even saw a mountain lion! This land has been our family's home for generations. It is very important that the land stays in the family, undeveloped and in one piece.

In my will, I have specified that the land will go to Mary, since she lives nearby and is interested in raising her family in this area. Mary, it is my sincere wish that you keep the land in the family, bring your own children here, and preserve the woods that we all love without dividing the land. I do not want to limit your options for the land and trust you to fulfill these wishes to the best of your abilities. It is also my hope that Kate and her family can visit the property, so that her children will know our family's land. I am at peace knowing that you understand how important this land is to our family, and I am confident in my decision to leave it to you.

Kate, since you live in another state and are not interested in moving back to the area, I am giving you all the stocks and bonds that your father and I invested in together. I have had the land appraised and determined that the value of the land is roughly the same as the value of these stocks and bonds. Use the stocks and bonds in any way you would like to meet your family's needs.

As mothers yourselves, you know how important it is for parents to treat their children fairly. I have done my best to provide you with assets of comparable value that will fit your life goals while meeting my goals of keeping our family land intact.

Love,

Mom



Ethan,

I am writing this letter to inform you of my wishes for the land after I die. As you know, your mother and I bought this land when we got married. Throughout our marriage, we relied on our woods for extra income when money got tight. I do not know if you would have been able to attend college without the extra money we got from the 1985 timber sale. We have heated our house with firewood from our woods for the past 50 years. In addition to the money, we have enjoyed our land for its beauty and the wildlife. As you know, Mom and I would go for a hike in the woods every Sunday morning before church. The area near the stream with the big sugar maple was your mother's favorite part of the land. It has wonderful spring ephemeral flowers. I don't cut any trees in that area and instead let nature take its course.

After your mother passed away, I haven't been able to go back to our woods because of my poor health. I am now leaving the land to you to do what you think is best. It is my hope that you will continue to enjoy and care for this land. I've worked hard to keep the forest healthy and provide habitat. I don't know how many hours I've spent pulling invasive plants! I hope the work of keeping up the land is not too much of a burden. It is well worth the effort.

The land is in the state's current use tax program, which reduces the property taxes and makes it affordable to own. We have a forest management plan that is in the file cabinet in my office. It was written by our consulting forester, Sarah Shenk. In order to stay in the tax program, you need to keep up with the recommended management. If you have any questions about the land or the tax program, give Sarah a call. Her contact information is in the management plan. She knows this land and can help. In my will, I have left you some extra money to help you keep the property and its management going.

I do hope you will enjoy this land as much as your mother and I did. Feel free to build yourself a house on the land if you want. If you need to sell the land, please consider finding an owner that will care for it like our family has or at least make sure it doesn't all get cut down for house lots.

Sincerely,

Your loving father



Revisiting your will

It is recommended that you review your will every two or three years or after major life changes, such as marriage, divorce, the birth of a child, the death of a beneficiary, or a significant purchase or inheritance, especially of land.



Changing your will

If your will doesn't include your land or you need to revise your wishes, updating your will is easy. Simply work with your attorney to write a new will to replace the old one, or make an addition using an amendment known as a codicil. You will want to make any changes when you are of sound mind and, ideally, in good health. This limits the likelihood that your wishes can be

successfully challenged and avoids decisions made in haste or under intense emotional pressure.



Moving forward

A will can be a very effective tool for ensuring that your personal and financial goals are met; however, like all tools, it must be used correctly to maximize its benefit. Contacting a local professional who can help you understand your options is a great way to move forward. For a list of land trusts, estate planning attorneys, and tax specialists with conservation experience, visit www.MassWoods.org. Talking to a friend or neighbor with experience in planning the future of his or her land is also a great way to find a professional to help.

Estate planning can be a lengthy but rewarding process.
The time to start is now!

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