



The Private Landowner Center

Estate Planning for Private Landowners

By

Robert Levite, Esq

Extension Educator, Land Use & Natural Resources

University of Massachusetts Extension

The fact sheet is designed to educate the reader and is not to be considered legal advice. Before making any plans or arrangements or taking other steps regarding your assets, it is imperative that you contact competent professional help to advise you on your own special circumstances.

The "Bundle of Sticks"

Ownership of real property involves distinct and separate rights, which include the right to sell the property, to use it in various ways, to lease it, to give it away or to exercise any one or more of these particular rights. It includes the rights to farm, hunt, timber harvest, build structures, subdivide, develop, cut the grass or hay or any other use that is within that permissible by local zoning and land use regulations. This ownership is often compared to owning a "bundle of sticks". One can retain all the sticks, give some away and keep others, sell some or divest oneself of all of the sticks. When a person owns all the rights, he is said to own the fee simple title. When he owns only some of the rights, he has a partial interest. The rights (sticks) can be sold or given away individually or in groups and they can be valued as a whole or separately. It is important to keep the "bundle of sticks" analogy in mind as you read these information sheets.

Landowners and Estate Planning

What is Estate Planning?

Estate planning may sound complicated and intimidating, but is really nothing more than arranging what is going to happen to your assets, both personal and real property, over time and after your death. When you are living, you control what happens to your property. Your estate plan will assist you in having control over what happens to your property when you pass away. This includes establishing who will own your land after you die and what that person can do with your land when it passes to him. Lacking an estate plan or even a simple will can cause great complications. If you fail to have a legal plan or will, the state will likely "write" one for you and it is unlikely to be as favorable to you as one you might produce for yourself.

Why Make Plans for Your Land Now?

This is a question that can best be answered with additional questions: Is my land unique? Are there things about my land that are important to me that I would like to see remain untouched and undisturbed? Has my land increased significantly in value since it came into my possession (is my basis small compared to the present value)? Will my children be able to afford to keep the land? Will some future owner care for my land the way that I have

cared for it? Can I protect the most important natural and scenic values of my land, while selling some of it for living expenses? What are my tax responsibilities and can I change those responsibilities with an estate plan? Do I want to see my land continue in farming or forestry? You get the picture. Clarifying your personal goals and desires for the land is paramount in any plans that you make for now and in the future. Careful estate planning can help you to reach these goals and lessen the financial and emotional impacts that accompany changes in your life. Federal estate taxes are one of the greatest reasons for having an estate plan. Your heirs may have to pay significant percentages of the overall value of your assets to the federal government upon your death. And these taxes are usually due within nine months of your death. This is discussed in more detail in later sheets.

What Steps Can You Take Now?

One of the first things you may want to consider is having your assets, both personal property and real estate, appraised. Once you have those figures, you can determine from federal tax rates what level of estate taxes your heirs might be responsible for upon your death. Second, think about what you want to have happen to your personal assets and your land. Answer the questions that were posed above as best you can. Consider talking with family members about what your goals and objectives are. It is helpful to have heirs understand your desires and for you to know their position on your goals. Be aware that creative planning can often eradicate the "either/or" problems that one faces when torn between preserving land from development and providing for one's heirs. Third, these decisions cannot be made lightly and upon the advice of a friend or relative. You need to have experienced professional assistance to help you understand your options and the steps that will most likely maximize your goals and financial needs. If you are not familiar with such professionals, contact a local or regional land trust or the local conservation commission and ask for referrals. Finally, if you do have some type of estate plan (such as an already existing will) in place, do not take for granted that that particular vehicle will best serve your purposes. Tax law has changed drastically in the past decade and what worked well in the 90's may not be appropriate for the 00's. Not only have the tax laws changed drastically, but the vehicle that you arranged previously to settle your estate may no longer be appropriate.