

## Estate Planning for Private Landowners #2

*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..*

### **Land Ownership Vehicles**

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As discussed in the Introduction, land ownership is not necessarily an all-or-nothing situation. You can own the entire “bundles of sticks”, you can share them with others, and you can give away and/or sell part or all of them. When you do transfer your property by sale, gift or through estate planning, the type of interest you have in your land will dictate what rights you can pass on to others. This information sheet is dedicated to describing briefly some of the more common forms of land ownership.

#### **Fee Simple**

When a landowner owns all the present and future rights to a property, that property is owned in *fee simple*. No one else has rights to the property. If you bequeath or donate fee simple title to someone else, the full fair market value is used to determine tax liability.

#### **Fee Simple with Qualifications**

You can transfer less than the fee simple title to your land if you desire to put certain restrictions on the future owners. Conservation Restrictions (termed Conservation Easements in other parts of the country) are one type of qualification. Properly completed, a Conservation Restriction can protect the land as the original owner wishes and produce significant federal income tax and possibly federal estate tax benefits.

A *fee simple determinable* automatically transfers a property if some particular event occurs (e.g., you might convey your land to Land Trust X with the proviso that it remains with the land trust as long as it is kept in farming. Otherwise, the land may “revert” to the family of the original owner.) It is imperative to look at state law to determine the requirements and the limitations on this type of clause.

#### **Life Estate**

You may retain or convey an interest in your property that lasts for the life of the holder of that interest. Most common is the landowner who conveys his property to someone else or to some organization, but retains the right to live on and use the property for the rest of his life. Certain duties remain with the holder of the life estate, such as maintaining the property, paying taxes and paying mortgage interest.

## **Concurrent Ownership**

You may own your property with more than one person (e.g., married couples, children who inherit a property jointly). The three most common types of concurrent ownership are:

- (1) Joint Tenancy, in which each of the parties owns the whole property and retains a right of survivorship (i.e., if one dies, his share automatically transfers to the other owner, tax free).
- (2) Tenants in Common, in which each owner owns a part of the interest in the land as determined by the initial division of shares. This may entail equal  $\frac{1}{2}$  interests between two people or different percentage interests among six siblings.
- (3) Tenancy by the Entirety, only available to married couples, provides that each spouse owns the whole of the property, neither can transfer his or her portion without the agreement of the other, and the property cannot be partitioned without the agreement of both parties. When one dies, the property automatically passes to the surviving spouse.

The determination of the method in which multiple owners own a property can have tax consequences.