

# Ensure Accurate and Complete Property Title

By Tom Conway

General Counsel, Legislative Liaison, Alabama Forestry Commission

One of the steps that you as a landowner should take before attempting to sell forest products is ensuring that you have the legal right to sell the products. Your failure to make certain that you have clear title to the land and the forest products being sold can result in significant legal complications, including litigation which can drag on for years and delay your payment or result in not receiving payment at all.

One of the first actions to take before selling forest products is to be absolutely sure that you have full and clear ownership of the property where the forest products are growing. There are several ways by which property can be acquired. You may have bought the property from a previous owner. If this is the case, the closing attorney should have conducted a title search to make sure the seller had the right to sell the land to you. You may have inherited the land by will from a parent or other previous owner of the property. In this case, it is unlikely that a title search would have been conducted when ownership of the property was transferred to you.

While property transfers by will are a common and completely valid method of acquiring ownership of land, it is important to note that the person who left the property to you could only transfer whatever legal interest he/she had in the property at the time of death. If the person had clear title to the land without mortgages, liens, or other encumbrances, you are not likely to encounter problems related to your ownership of the property. However, you need to verify that you received clear, unencumbered title to any land acquired by will before planning a timber sale on that property.

There are various other ways of acquiring real property. In most cases, you will find that you do have clear legal title to the property you believe you own. When you contemplate a timber sale, it is imperative that there not be any doubt that you own the land where the timber is located. If you have the slightest question about your ownership, you should not move forward with a timber sale until you have consulted with an attorney to confirm that your title to the property is clear. While no one likes to spend money for legal fees, the cost of ensuring that your title is clear can be small compared to the costs that will be incurred if you sell timber and it's discovered later that you did *not* have the right to do so.

Validating your ownership of the property is only one step you should take before selling forest products. In addition, you should make sure that you own and have the legal right to sell the timber on the property. It's easy to assume that if you have clear legal title to the property, you also have clear title to any forest products growing on the land, but some situations present complications which must be addressed before a sale takes place.

One situation involves the common ownership of a parcel of real estate by two or more joint owners. This happens frequently when property is left to children or other relatives in a will and the heirs are named as "joint tenants" rather than each individual

heir being given a designated portion of the property. In some cases, one joint owner of a parcel of property may sell the timber on that property without the knowledge or consent of the other owners, and without sharing the proceeds of the sale with the other heirs. The other joint owners may not become aware of the sale for some time because heirs often do not live near the property. However, when the sale is discovered, as it will be eventually in every case, the legal and personal fireworks will begin.

If you are a joint owner of property along with siblings or other owners, you should never attempt to sell forest products from the property without the involvement and informed consent of all owners of the property. When co-owners of land discover that products from the land have been sold without their knowledge, they have a right to recover their portion of the proceeds. The seller of the forest products can pay the other owners of the property voluntarily, but more often, the co-owners hire attorneys and initiate civil lawsuits against the individual who sold the timber. The AFC is aware of cases where attorneys' fees and the other costs of litigation have actually exceeded the value of the forest products that were sold originally. Aside from the legal implications, the sale of forest products from land owned in common with other owners without their knowledge and consent can create resentment and bitterness that lasts for generations.

Another occasion where issues can arise during a timber sale, even when you have clear title to the land itself, is when there are one or more mortgages, liens, or other encumbrances on the property. In some cases, a bank or other lender who has loaned money against the value of the property has done so with the assumption that the forest products are included as part of the security for the mortgage. An individual, business, or government agency with a lien against the property may also have an interest in any forest products on the property. Responsible timber buyers will always check courthouse records to see if there are recorded mortgages, liens, or other encumbrances that must be addressed before any transaction involving forest products from the land takes place. However, you can save time and frustration by checking with any individual or entity that has a mortgage or lien against the property before planning a timber sale. Failing to resolve such issues could result in the holder of a mortgage or lien claiming all or part of the proceeds of the sale.

This chapter is only a brief look at some of the ownership issues that should be considered and resolved before undertaking a timber sale. The vast majority of timber sales in Alabama are completed to the satisfaction of both buyer and seller, without legal disputes arising. In most of the cases where legal disputes do occur, the issues could have been resolved before the transaction started by taking the steps described in this chapter. When there is any doubt as to ownership of property and forest products, or the right of an owner to sell forest products, it's always wise to consult an attorney before signing any documents related to the transaction.☞