



Owning and Managing Forests



A Guide to Legal,
Financial, and Practical
Matters

THOM J. McEVOY

Foreword by Carl Reidel

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Owning and Managing Forests

“It was only after we pondered on these things that we began
to wonder who wrote the rules for progress.”

—Aldo Leopold, *A Sand County Almanac*

“Everything should be made as simple as possible,
but not simpler.”

—Albert Einstein

Foreword

As a young forestry student I learned to view a forest only as a physical-biological entity, in hindsight more complex and dynamic than I could then understand. While I was aware of the social and economic aspects of forestry, they didn't seem relevant to my interests in wildlife, trees, and forests. It didn't take long on my first job, however, to realize that my understanding of forestry was sorely inadequate. Experience soon taught that the legal, financial, and social problems of managing the woodlands for which I was responsible were far more challenging than the biological aspects of forestry. Only after some three decades of practicing and teaching forestry have I come to see how inextricably interwoven are the human and natural contexts of forests, and how essential it is to understand those relationships to manage our woodlands for the goals and values we seek.

Most owners of small woodlands know that managing their lands is complicated by problems they did not anticipate when they decided to buy the land or begin active management on a previously ignored or inherited tract. One could find hundreds of books and pamphlets giving advice on such tasks as tree planting, silviculture, harvesting, and forest protection, but little was available to help anticipate and resolve the inevitable legal and financial problems of woodland management. As a result, unwise investments, legal mistakes, and poor financial planning have probably caused more woodland management failures than fires, insects, and inappropriate silviculture combined.

For many woodland owners, this book can make all the difference between success and failure when it comes to legal matters related to owning and managing their lands. Although it is

not a substitute for the advice of a professional forester or a qualified attorney, it will make private owners far more savvy consumers of those services. In practical, everyday language Thom McEvoy explains the historical roots, legal principles, and technical details of property ownership and management that will enable woodland owners to ask the right questions of their attorneys, consulting foresters, and everyone they encounter in the complex task of owning and managing land. Knowing the right questions will prepare them to make better choices of partners, forestry and tax consultants, financial advisors, and attorneys, and better able to judge their answers. Little of the information in this book is new, certainly not to a seasoned extension forester like Thom McEvoy. What makes it special and unusually valuable is the way the information is organized and put into both historical and practical perspective, leading the reader to see how decisions in one aspect of management affect others over time. McEvoy explains, for example, how early decisions about methods of ownership and financial management affect long-term goals, tax liability, and estate planning. He sees the legal and financial aspects of woodland management in the same integrated way that modern foresters are coming to understand complex forest ecosystems: everything is connected and interactive.

This book will help the woodland owner to understand and appreciate that the often confusing and seemingly burdensome aspects of the law affecting land ownership are rooted in history as surely as a forest is the result of decades of natural biological succession. And, as we are learning that every aspect of a natural system is critical to the whole, McEvoy leads us to see that our unique rights as private landowners in the United States rest on a complex legal system that balances our rights and obligations with those of the public at large—a system that has evolved and been tested over time. Put simply, the past is always prologue.

This simple truth came home vividly for me a few years ago when I was trying to advise some Russian foresters in Siberia who were charged with transferring state lands to private ownership. I wish I had had this book then, for their questions raised all the subjects that McEvoy so clearly explains: What rights do owners have? How are those rights granted and protected? How is the land

marked on the ground? What can people do with the land? Can they change the uses, subdivide it, sell it, give it away to family, inherit it, mortgage it? Can they sell the trees or minerals and keep ownership of the land? Can they exclude others from using it, or use it in ways that destroys wildlife habitat? Who decides? How is government financed to do all this?

I found myself telling the history of the United States and how we created constitutions and such democratic institutions as courts and local governments to carry out those social contracts. I tried to explain how they would have to “invent” a system of surveys, deeds, and titles; town halls and methods of recording deeds and contracts; corporations; a court system; and even lawyers and tax collectors. They were overwhelmed with the realization that they were faced with a task that took the United States several hundred years to develop and refine by building upon centuries of English Common Law!

I reflected recently on that experience in Siberia as I sat beneath a venerable old oak on some land we own along Lake Champlain. That tree has witnessed all those changes in its lifetime. As a seedling it was within the common land of the Abenaki tribe. When a century old, the old oak came within the boundaries of a parcel of private land defined in fee simple under English Common Law. It now stands on a tract of private land governed by the complex laws of our nation, state, and the local town, which both limit and protect the bundle of rights we hold in fee simple. Tracing the history of all the legal and financial claims on this tree is as much a part of understanding woodland management as understanding its ecological history as a red oak. In many ways, it is as daunting a task for us landowners and foresters here in the United States as it for those in Siberia seeking a way to create private land ownership. We are fortunate to now have Thom McEvoy's book to guide us.

Foreword to the Second Edition

This new edition comes at a time when there is even more complexity to the legal and financial aspects of woodland ownership than when it was first published. Thom McEvoy has not only updated the details of how to cope with these practical matters, but

has also written a fascinating history of how American private property laws evolved from English Common Law. This added historical depth is not just a good story. Most importantly it helps the reader make sense of the seemingly chaotic legal maze facing woodland owners today by putting it in historical context. He has affirmed the old adage that the past is always prelude. Hopefully that will also challenge woodland owners to think carefully about how best to transfer ownership of the land they have cared for in the past to future generations.

Carl Reidel
Professor of Forestry, Natural Resources,
and Environmental Policy
University of Vermont

Preface and Acknowledgments

I began my career in academics many years ago as a prelaw student at Michigan State University. Fascinated with law, and assured by family and friends that lawyers make a good living, it seemed like the perfect path. That is, until I took a course in forest ecology. Even before the end of my first year in college I had changed disciplines, and four years later—jobless—I did not regret it. Aside from a short stint as a consulting forester struggling to make a living in the aspen forests of northern Michigan, followed by graduate study in forest biology, I have spent my entire career as an extension educator in forestry, a job I love.

About fifteen years ago, I considered going back to school for a J.D. degree. So serious were my plans, I took the LSAT and scored well enough to receive an offer for admission to the law school I wanted to attend. But events and lack of financing conspired against me and I never went. Instead, I audited an undergraduate course in business law at the University of Vermont. It was an excellent course, with one of the best teachers I have ever encountered. I was so inspired by the experience that I began to write and speak about legal aspects of owning and managing woodlands.

In 1986, I was invited to give a presentation to a group of non-resident woodland owners on the subject of selling timber. After the talk, one of participants—a lawyer—came forward to offer his compliments. Although there were several valid criticisms he could have shared, he applauded my unfettered and clear explanations of abstract and often difficult legal concepts. Little did he know it does not take much encouragement from the right sources to launch me headlong into a project. For more than ten years I had wanted to write this book. At first the task was daunting, a good reason to put

it off. But I was haunted. The question from colleagues I had not seen in a while became: "So, when is the book coming out?"

An outline for the book began to take shape in the fall of 1995. I shared my ideas with anyone who would listen—woodland owners, foresters, loggers, lawyers, accountants, estate planners, and others. A year later, the outline became the proposal for a twelve-month sabbatical leave from my post as extension forester at the University of Vermont. In the fall of 1996, I circulated a draft table of contents for the book to my extension colleagues around the country and received from them much encouragement and a pile of materials on local regulations and state extension publications dealing with legal aspects of owning land. Some of those materials were very useful.

When I set to writing in December of 1996, the task proved every bit as daunting as I feared. I quickly became bogged down in details, realizing all but the most dedicated readers would fall fast asleep after the first few pages. It took weeks to locate a proper voice and to discover a formula that would allow me to cover a huge subject area in a small book. Throughout, I have taken the position that it is more important to know how to ask the right questions than to have answers to the wrong questions. Detail-oriented people will find the book unsettling; after all, how can anyone explain the complexities of, for instance, land trusts in just a few pages? Generalists will say, "Good, it is about time the emphasis is placed on broad understanding rather than mind-numbing details that make even the most well-accepted, broadly applied set of facts nothing more than fanciful wanderings of the author." In other words, it was pointless to write something that people would not read.

My goal was to write a book that people will read on a subject that is of great importance to woodland owners: understanding the legalities of real property, the rights and responsibilities as well as the opportunities and pitfalls of owning and managing forests. The prospects for future forests, and the importance of thinking like a forest when it comes to long-range planning, are also major themes. My measure of success in this endeavor is the degree to which readers are empowered to become more active forest managers.

I am not a lawyer. Thus, nothing in the text should be construed as legal advice or legal opinion. This book is based on information

that is generally known and on my ideas, some of which have been inspired by other cited sources. The ideas are intended to provoke readers to consider strategies and methods to improve the long-term management and care of woodlands, and to seek the advice and guidance of qualified local professionals. Nothing in the book should serve as the sole basis for a reader's actions or inactions. For these reasons, the author and publisher disclaim responsibility or liability for loss that may result from a reader's interpretations or applications of the material in the book.

Many people deserve thanks for their help. Among them are two well-seasoned attorneys who reviewed the manuscript from cover to cover, offering many important and useful suggestions. They wish to remain anonymous "because of potential disagreements with colleagues." Because I know they will see the book, I want to express my gratitude here for their extraordinary efforts. Many thanks to Larry Bruce, a practicing attorney in St. Albans, Vermont, who read the manuscript, made many useful suggestions, and agreed to be acknowledged.

Special thanks go to Doug Hart, a woodland owner in Quechee, Vermont. Doug reviewed chapters throughout the year, and he gave the final manuscript an especially close reading. We communicated exclusively by e-mail, and his many excellent comments and suggestions have made my writing much easier to follow. The illustrations are the work of Marna Grove of Pencil Mill Graphics in Castleton, Vermont. Her creations were a truly collaborative effort, and it was a pleasure—as always—to work with her.

Others who deserve thanks include: Tami Bass, a surveyor in Vermont, for reviewing the chapter on surveys and boundaries and offering some tips on illustrations to help explain blazing; Sarah Tischler, attorney and estate planner, who was of immeasurable assistance in the preparation of the chapter on estate planning; Lloyd Casey, forest taxation specialist with the U.S. Forest Service, who reviewed the chapter on forest taxation and served as my primary source for information on the Taxpayer Relief Act of 1997; and Keith Ross, a forester with the New England Forestry Foundation, for suggesting the section on like-kind exchanges and for providing most of the information presented there. I also want to acknowledge the efforts of other reviewers, each of whom read the

entire manuscript and offered comments to improve it: Harry Chandler, Stanley James, Farley Brown, and my extension forestry colleagues Larry Biles and Rick Fletcher. Thanks also to the following people for help with various aspects of the project: Deborah LaRiviere, John McClain, Maria Valverde, and my eight-year-old son, Christopher, who helped organize one of the appendices. Finally, I want to thank my colleagues at the University of Vermont for allowing me a sabbatical leave to complete the project.

I wish to dedicate this book to two important women in my life: my deceased mother, Doris, who always told me I could do anything I put my mind to, even though I eventually learned this was not completely true; and my wife, Hallie, who makes each day a gift. Forever and always. . . .

Preface and Acknowledgments to the Second Edition

When my editor at Island Press asked if I was interested in doing a revision, I said “sure,” but then grossly underestimated the amount of time it would take. Now eight months after the first deadline expired, I’ve learned my lesson about updating and revitalizing an original piece of work, especially one that has rules, regulations, and laws as its central theme. Where it was easy (or relatively so) seven years ago to use generalizations as a tool to ferret out the most relevant applications of laws to the actions of forest owners, I now have to resist the tendency to want to qualify every statement.

This book, however, is more than a facelift of the first edition with new information in virtually every chapter. I have attempted to address the concerns of readers who offered comments on the original work, and added new sections that I scolded myself for omitting from the first book. Nevertheless, for many readers even this new effort is nothing more than a glossing over of important topics, each of which could be easily expanded into a separate book.

The one aspect of forests that has changed most since 1998, when this book was first published, is that forestry communities have finally acknowledged the real yet insidious threats from continued parcelization of forest lands. When forests are the principal source of wealth in a family, parents almost always divide land among children in their wills so that each receives a fair share of

the family wealth. Unfortunately, the process of dividing land tends to fragment purpose, making it almost impossible to retain local forest products industries that are essential to maintaining a forest landscape. Tracts that were measured in terms of sections, or bounded by ridges and rivers not that long ago are now divided into parcels of five, ten, or twenty acres; enough land for a home and a place to run the dog, but not enough to support local mills, logging contractors, or untrammelled corridors for wildlife.

If given a choice to obtain one lasting effect on readers who discover this book it would be to encourage them to realize the importance of keeping forest lands intact, and to inspire them to explore the plethora of strategies for passing well-managed lands to future generations. Although many forest owners confess an unwillingness to “rule from the grave,” trusting heirs instead to do whatever is necessary, the strategies to pass lands intact are not nearly as exotic today as they were in 1998. Now, leaving forest lands intact is not only an appealing legacy for future generations, but it also an excellent investment; one heirs will attribute to your genius.

Special thanks are due a couple of forestry students who were instrumental to this work: Phil Pare for researching and organizing new information, and Darrel Pendris, who single-handedly developed appendix C—a listing of web resources. I also want to thank the following people for reviewing the final manuscript and offering many helpful suggestions: Alan Calfee, consulting forester in Vermont; Lloyd Casey, retired U.S. Forest Service expert on IRS matters involving forests, and now consulting forester in Pennsylvania; Sara Gentry-Tischler, Esq., an attorney and estate planner in Vermont; and Carl Reidel, professor emeritus at the University of Vermont, for comments on the manuscript and for agreeing to update his foreword to this edition. A very special thanks to Tom Bullock, Esq., an attorney and forest owner in New Jersey, who gave the manuscript a close reading and offered many excellent comments, almost all of which I used.

Finally, I want to dedicate this edition to another important woman in my life, Kara Lynn McEvoy.

Burlington, Vermont
May 24, 2005

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