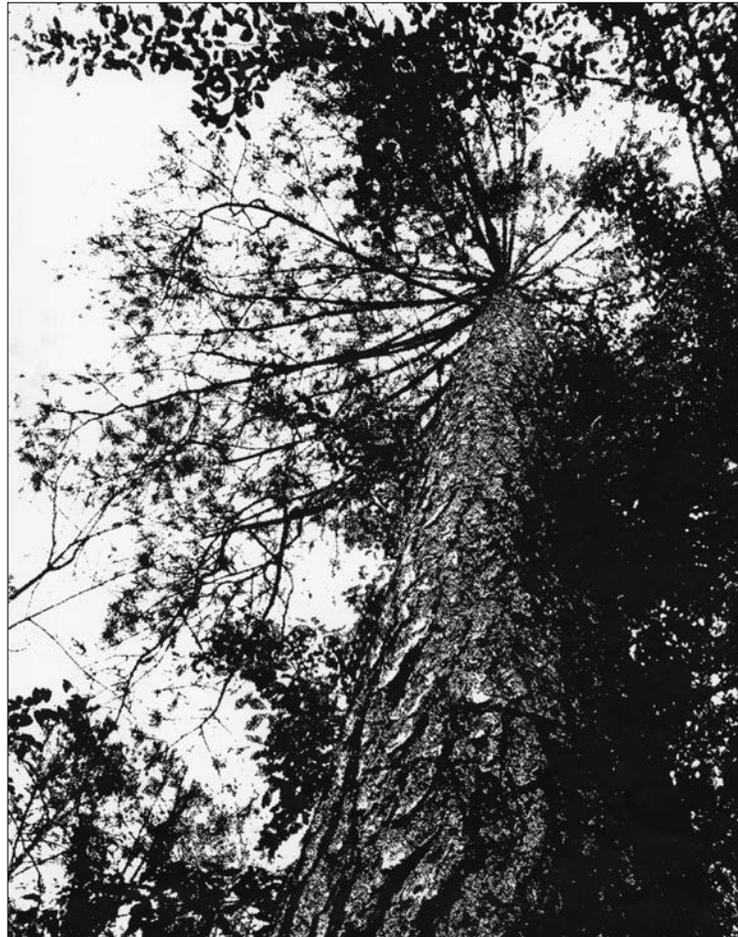


Legal Terms and Concepts for Forest Landowners



As the populations of Mississippi and the nation increase, more and more pressure will be put on forestlands to satisfy the needs and demands of people. Forest landowners will find themselves in the unique situation in the future as being providers of raw wood products and protectors of the resource. As land resources and related wood products increase in value, more emphasis will be placed on maintaining and protecting the integrity of forestlands.

Greater economic value will result in an increased number of intrusions into forestlands. Those intrusions may take many forms, including trespassing on land

and timber, boundary-line disputes, land-title problems, timber-cutting disagreements, contract interpretation problems, and increased litigation. As a forest landowner, you must be aware of the legal aspects of forest management and ownership. This expertise will allow you to better safeguard land and timber.

This publication contains selected legal terms and concepts important to forest landowners. A careful study of the information provided will help you deal with the increasing number of possible legal problems associated with land and timber ownership.

Legal Terms and Concepts Defined

Abstract of land title

A shortened history of the title to a tract of land.

Accession

Addition to property by growth or improvement

Acceptance

Receiving something from another with the intent to keep it, and showing that this was based on a previous agreement such as a contract (an offer and an acceptance of that offer).

Accommodation road

A road opened so certain individuals can benefit from land use.

Accretion

The gradual and imperceptible adding to or accumulation of land by natural causes, such as through river deposition.

Acknowledge

To admit or recognize one's own acts.

Acre

A quantity of land containing 160 square rods, 4,480 square yards, or 43,560 square feet of land.

Act of God

Any act caused exclusively by natural forces without interference from a human agency.

Actionable

When enough facts or circumstances exist to meet the legal requirements to file a legitimate lawsuit.

Adjective law

The body of law dealing with rules of procedure; the legal machinery of the courts.

Adjudge

To decide judicially; to settle.

Adversary

The party opposite in a court action; the litigant-opponent.

Adverse possession

A statutory method of acquiring title to land under certain conditions.

Affiant

The person who makes an affidavit.

Afforestation

The conversion of a part of the country from other uses into forestland, thereby subjecting it to forestland.

Agreement to sell land

A contract for the future conveyance of land.

Antitrust

Laws designed to protect commerce and business from unlawful restraints, monopolies, or unfair business practices.

Appeal

The removal of a case from an inferior court to one of higher jurisdiction for the purpose of correcting or reversing a decision.

Arbitration

A nonjudicial proceeding used as an alternative to court action where a neutral third party (arbitrator) is utilized to restore a dispute through the issuance of a binding decision as to law and fact.

At law

According to the law.

Backlands

Lands lying back from (not contiguous to) a highway or a watercourse.

Bad title

A title that conveys no land to the purchaser.

Breach of contract

The failure by a party under a contractual obligation to perform a contractual duty at the time, place, and under circumstances specified in the agreement.

Clear title to land

Good and marketable title to land.

Cloud on land title

An actual or apparent outstanding claim (for example, an old mortgage or deed of trust with associated debt) on the title to real property that could impair the title of the owner.

Color of title

The appearance of having title to land by some evidence, when in reality there is either no title or a vital defect in the title.

Contract

A legally binding promise (between two or more people) that creates, modifies, or extinguishes a legal relation or duty.

Conveyance

In real property law, the transfer of a legal title to land.

Court

A legally created tribunal empowered to adjudicate case at law and/or equity.

Cut-over land

Land that has been logged and the most desirable trees harvested.

Cutting contract

A written, legal document used to bring about the sale of standing timber under certain agreed stipulations (between buyer and seller).

Deed

A written conveyance of land signed by the grantor transferring title to the grantee.

- **Assumption warranty deed**

A deed to real property that guarantees the seller owns clear title to an existing mortgage that can be conveyed. By taking the deed, the grantee agrees to assume the mortgage and become liable on it.

- **Quitclaim deed**

A deed to real property conveying whatever title grantor has to the grantee, but without making any warranties regarding the validity of the title.

- **Special warranty deed**

A deed in which the grantor warrants or covenants only against the claims of someone claiming by, through, or under the grantor.

- **Warranty deed**

Contains certain guarantees of title by the grantor that the deed conveys a good and unencumbered title and that the grantor and his or her heirs will defend the title against all others. Often called a general warranty deed.

Devise

A gift of land or realty by last will and testament of the deceased person.

Disaforest

To restore the land to nonforest uses.

Doubtful title

Land whose title is believed to be invalid in some respect.

Easement

A right held by one property owner to make use of the land of another for a limited purpose, as right of passage.

Egress

An exit route; the right to leave or go out.

Ejectment

A legal action to physically expel one from land.

Eminent domain

The right or power of a government to take private land for public use.

Encroachment

An unlawful entry upon the land of another.

Equity courts

Courts that administer justice according to rules of equity or rules of conscience.

Escrow

A condition existing when a third party conditionally holds the deed.

Estate

An interest one possesses in land or real property.

Execution (of the contract)

The performance of the contractual obligations by the parties to the contract.

Fee (fee simple)

Absolute title to land, which one can sell or pass to another by will or inheritance. The title is free of any other claims against it.

Fiat

A court order.

Fixture

A piece of once-mobile personal property permanently attached to building or land.

Foreclosure

The removal of the rights of the person (mortgagor) holding the mortgage in the property that is the subject of the mortgage.

Forest acreage tax

A special tax levied by the county board of supervisors on all timbered and uncultivable lands in the county.

Forestland

Tract of land with trees and woody plants generally covering the landscape.

Forester

A professional trained in the art and science of forestry.

Forty

A subdivision of a government survey, consisting of 40 acres of land, in the general form of a square.

Fraudulent conveyance

A conveyance of real property with the intent to defraud a creditor by placing the property beyond his or her reach.

Free and clear title

A condition existing when the title to real property is not encumbered by any liens.

Freehold

A right of title to land.

Gift inter vivos

A gift made between two living people.

Gift testamentary

A gift made when the donor is deceased and the recipient is alive.

Good title

Ownership of real property that is totally free of claims against it and therefore can be sold, transferred, or put up as collateral.

Grant, bargain, and sell

Words of conveyance of land in a deed.

Grantee

The person to whom the land is conveyed.

Grantor

The person who makes the conveyance of land.

Heir

One who inherits either real or personal property.

Incumbrance

A lien or claim against real property.

Indemnity

To guarantee or insure against a certain act or to refrain from doing a certain act.

Ingress

The act of entering; the right to enter or go in.

Injunction

An order, usually to perform a certain act or to refrain from doing a certain act.

Intestate

A person who dies before making a will.

Invitee

One who is invited on the property of another for the benefit of the owner.

Jurisdiction

The power or authority of the court to hear and finally dispose of the case.

Lawful entry

Lawful entry under some claim by one who is not in possession of the land.

Lease

A contract for the use or possession of land for a determined period of time with stipulated conditions.

Leasehold

A lease of land.

Legal title

Land title that is recognized as complete, enforceable, and perfect.

License to enter

Permission to enter the land of another; revocable at will.

Licensee

One who lawfully enters the land of another for the furtherance of his or her own purposes.

Lien

A claim or encumbrance on the land of another for the furtherance of his or her own purposes.

Life tenant

One who holds an interest in land; interest limited to the length of the tenant's life or the life of another.

Line

The boundary between two parcels of property owned by two different people.

Lis pendens

A suit that is pending, giving the court of competent jurisdiction control over the property until the case is finally disposed of.

Litigant

A party in a lawsuit.

Litigation

A lawsuit; the act of carrying on a legal contest by the judicial process.

Lost corner

A corner that cannot be located although it was earlier established either by government or other survey.

Measurement of sawlogs

In Mississippi, "Scribner's Lumber and Log-book by Doyle's Rule" is the standard rule of measurement by which sawlogs are measured. The use of any other rule of measurement is unlawful.

Measurement (Diameter Breast High) of standing trees

In Mississippi, the diameter breast high (approximately 4.5 feet) measurement of standing trees is from outside bark to outside bark.

Merchantable

Having salable value on the commercial market.

Mineral deed

A deed conveying mineral interests of land to the grantee.

Negligence

Carelessness; a lack of reasonable care.

Obligation of a contract

The provisions under a valid contract that are legally binding on the contracting parties.

Occupant

One who takes possession of land and controls the activities going on there.

Of record

Recorded; a deed or other legal document recorded in the appropriate clerk's office.

Offer

In contract, to make a proposal; to hold out an offer as in the attempt to make a contract.

Offeree

In contract, to whom an offer is made.

Offeror

In contract, one who makes an offer.

Oral contract

A contract based on a totally oral agreement between the parties or a contract that is partly written and partly oral.

Ordinance

A rule of law; an act passed by a municipality.

Owner

The person whom the law recognizes as vested with title and ownership of land.

Paramount title

A right to title that prevails over any other person's claim of title.

Parole evidence rule

A rule of evidence that prohibits the introduction in court of evidence of oral or written statements made before or simultaneously with the execution of a complete written contract, deed, or instrument.

Partition

A lawsuit that one co-owner of real property can file to win a court order requiring the sale of the property and division of the profits. Partition cases are common when co-owners differ on whether to sell, keep, or divide the property.

Personalty

Moveable assets; personal property, any property not land, real property, or fixtures.

Possession

The custody and control over land to the exclusion of all others.

Power of attorney

A written document authorizing someone else to act in a person's place.

- **General power of attorney**

A written document authorizing another to perform any legal act that the person granting the power of attorney could perform.

- **Special power of attorney**

A written document authorizing another to perform specific legal acts or acts setting forth specified limits on the authority.

Procedural law

The step-by-step process of a lawsuit; the legal machinery for a lawsuit from beginning to end.

Promise

A declaration that ethically—but not legally—binds a person to do or not to do something; in contract, a promise supported by consideration is legally binding on the party making it.

Promisee

Person to whom a promise is made.

Promisor

The person who makes a promise.

Proof

The establishment or nonestablishment of a fact by evidence in a court of law or equity.

Realty

Real property; land; anything pertaining to the nature of real property.

Reasonable prudent person

The standard of conduct used to determine whether a defendant has been guilty of negligence.

Rescission

In contract law, the setting aside of a contract as though the contract had never been made; the contracting parties are placed back in their original positions as before the contract was entered into.

Register of deeds

One who records deeds; recorder of deeds.

Rent

The consideration (usually money) paid for using real property.

Respondeat superior

The legal doctrine that the employer is liable for the unauthorized torts committed by an employee while acting within the course of the employment.

Reversionary interest in land

An interest a person has in the reversion of lands; title was once in the grantor and at some future date, title will revert to the grantor a second time.

Right-of-way

The right to cross or pass over the land of another.

Round forty

A tract of land originally in the shape of a square that has become more or less rounded in shape because of a "pushing out" or adverse possession activities of the owner over a period of years. Because of these activities, the original 40-acre tract now contains more than 40 acres.

Running with the land

A covenant (such as an easement) that will follow the land title from owner to owner.

Severance tax

A tax paid on forest products by unit, usually by the first processor, after the products are harvested, cut, or severed from the land.

Specific performance

An equitable action compelling a party to specifically perform a contract or contract provision.

Statute

A legislative enactment.

Statute of frauds

An act requiring some contracts to be signed and in writing to be enforceable; a contract for the sale of land.

Substantive law

The area of law that defines rights and duties of members of society.

Tenancy

The legal estate of the tenant defining its nature and duration.

- **Joint tenancy**

Joint tenants have identical interests in the land beginning at the same time and held by identical, undivided possession.

- **Tenancy by the entirety**

A conveyance is made to husband and wife. Each takes the entire estate, and after the death of one, the surviving spouse takes the whole estate.

- **Tenancy in common**

Where different people hold an estate in land under different titles with unity of possession; each tenant has the right to occupy the whole estate in common with his or her co-tenants.

- **Tenancy at will**

One who holds possession of land without a fixed term with permission of the owner; the owner may revoke or terminate the tenancy at any time (at will) without reason.

Testate

One who dies with a will made.

Title

The owner of lands has legal and just possession of his land.

Timber deed

A deed conveying certain described timber located on a particular tract of land.

Timber sale contract

A written, legal document setting forth the agreement of the parties regarding the size, species, and other description of the timber to be sold, specifically describing the tract of land on which the timber is located and other particulars of the sale.

Timber trespass

The unlawful cutting, deadening, destroying, or taking away of any tree or trees without the consent of the owner.

Trespass

An unlawful intrusion onto the property of another.

Trespasser

One who unlawfully enters the land of another.

Uniform Commercial Code

A detailed code of business laws encompassing several areas of commercial law with emphasis on the law of sales, promissory notes, and other commercial paper and secured transactions. The Uniform Commercial Code, with variations, has been adopted in whole or in part by all the states.

Waiver

Intentionally giving up a known right.

Way

A path, road, or passageway over land.

Will

A written, legal document specifying the disposition of property and other matters taking effect on the death of the maker.

Wild land

Land in the natural state as defined by current social norms.

Wrongful act

An unlawful act; an act in violation of the law.

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