

Maryland Agricultural Land Preservation Program

FACILITATING THE SETTLEMENT OF AN AGRICULTURAL PRESERVATION EASEMENT

This Fact Sheet describes measures you can take to expedite the process of selling an easement to the Maryland Agricultural Land Preservation Foundation (MALPF).

Actions You Can Take to Facilitate Your Settlement

- PROPERTY DESCRIPTION -

Unfortunately, title deed descriptions, when plotted and computed, are often inconclusive and may vary significantly from the acreage stated in the deed or the State's Property Tax records. The Foundation must also be sure that the acreage covered by the easement is the same as your district agreement. If there is a discrepancy, you may be required to have a survey conducted by a professional land surveyor at your expense.

Out-conveyances pose additional problems. Your deed may be very old, and several small parcels might have been conveyed to others before the district agreement and deed of easement were finalized. If you were unaware of some of these out-conveyances, you may discover that you have less acreage than you thought.

In some cases, a title search or survey reveals more or less acreage than you thought you owned. In these cases, if the verified acreage difference is within two percent of the acreage in the district, payment is based on the original acres less one acre surrounding each pre-existing dwelling. If the verified acreage is less than two percent of the original district acreage, the offer is adjusted accordingly. If the verified acreage is greater than two percent of the original district acreage, the offer cannot be adjusted upward to cover the additional acreage. In this situation, the landowner must choose to accept the original offer amount or reject that offer and reapply to sell the easement at a later date based on a verified higher acreage total.

Some of your development rights may have already been removed. For example, a power transmission line which runs across your property may have involved an easement in which you or a previous owner were paid not to develop under the lines and towers. In such a case, the acreage on which the Foundation pays will be reduced by the acreage on which the development rights have already been purchased by the power company. Forest conservation or open space easements can also reduce the acreage on which the Foundation is able to purchase easements.

Prior to submitting an application to sell an easement, verify that deed references shown on your easement application truly reflect the proper easement acreage after out-conveyances or sale of development rights to other parties. This will greatly assist the settlement process.

If you are aware that the legal description in your title deed is incorrect or insufficient, you may wish to submit a survey of the property with a written metes and bounds description, rather than waiting for notification from the Foundation of a problem.

The Foundation cannot detect faulty deed references or acreage adjustments until the title search has been completed and reviewed by the Attorney. Please be aware that the title search could hold up settlement for a significant period of time, and, if the acreage cannot be verified, you will be requested to submit a survey of the property which may further delay the process.

- INSTALLMENT OR INTEREST PAYMENTS -

You must choose in your option contract how you wish to be paid: the entire amount at closing, annual installment payments over two to 10 years, or semi-annual tax-exempt interest payments over 10 to 30 years with payment of the principal at the end of the agreement. You may wish to consult with a tax professional before you indicate your payment preference. Settlement usually takes place within the same calendar year unless title problems delay the process. The settlement check is based on the amount you specified in the option contract unless acreage adjustments are made.

If you decide to make a change in your payment option or change your installment payment schedule or installment purchase agreement term, the settlement process stops until you initial and return a revised schedule. Changes involving the installment purchase agreement option may delay settlement. If a change were to take place after the settlement check is ordered, the check must be stopped and a new check ordered for the revised amount which will take another month. **To avoid delays in settlement, please review your payment needs and tax consequences at your earliest convenience.** If, after you have sent in the option contract, you discover the need to revise the payment schedule, notify the Foundation immediately. Because of the expense to the Foundation of the installment purchase agreement option, a date may be set after which the settlement payments option cannot be changed.

If your offer includes State bond funds or Federal matching funds that require certain limitations or conditions, you will be notified of those limitations and/or conditions.

- MORTGAGES, LIENS AND LEASES -

If your land is encumbered by mortgages, financing statements on fixtures, liens by legal judgments against you, equity lines of credit, or third party interests in gas, coal or other mineral rights, all mortgage, lien or lease holders must release or subordinate their interests to the Foundation. Settlement cannot take place until all affected parties agree to sign the deed of easement. Signatures of such parties are also required on the easement application and the option contract.

The Foundation is spending public funds to insure that the land is restricted to farming and forestry uses. If a party with a lien on the property is not made part of the agreement and it subsequently forecloses on the property, the deed of easement would be displaced and ineffective against a purchaser.

You can assist the subordination process by making sure that you have contacted all such parties and explained the conditions of the program. If they have any questions, they can access the Foundation's website or contact the Foundation or the local program administrator directly. You are responsible for working out the terms or conditions of releases or subordination with holders of mortgages, liens or leases. Most mortgagees will subordinate without compensation, but some will require a full release or a partial payback before they will sign the subordination.

Third party interests can delay the settlement process. They usually prefer to review the deed of easement with their attorneys prior to signing and frequently do not wish to appear in person at settlement. In these cases, their signatures are acquired by mail prior to settlement.

- UNIQUE TITLE ISSUES -

Some properties have unique title issues. Your own property may be held by Trustees or in the name of an entity such as a corporation, partnership or limited liability company. You can help expedite your settlement by providing information on any unique issue of which you may be aware. The following are examples.

- If a Trust holds title to the property, provide copies of the governing trust instrument and all amendments thereto, as well as names and addresses of all trustees and beneficiaries.
- If an owner of record of the property is no longer living, provide copies of the death certificate.
- If the land is owned by a family corporation, partnership, limited liability company or other such entity, provide the names and relationships of all the principals in that entity. For a corporation, provide shareholders; for a partnership, provide partners; and for a limited liability company, provide members. Further, provide organizational and authorization documents showing that the transaction is authorized by the entity and naming a person to act on behalf of the entity. Provide a Certificate of Good Standing for the entity.

PLEASE NOTE: The Assistant Attorney General who acts as legal counsel to the Foundation and the Assistant Attorney General for the Department of General Services are employed to serve the interests of the State of Maryland. They cannot provide you with legal advice and should not be considered as your attorney. The Foundation and its legal counsel cannot provide tax advice.

This fact sheet is a public document and is provided for general information only. If you have a question about a specific law, regulation, or provision of the district agreement, option contract, or deed of easement, please consult legal counsel.

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<http://www.malpf.info/facts/fact05.pdf>