

# TIMBER PRACTICE

by Mark Pottorff and Matt Moore

The attorneys in SGR's Timber Practice assist clients with acquisition, sale, management and financing activities related to "timberlands" – forests with trees that are capable of being used as commercial products.

## What should buyers look for in a timberland transaction?

Buyers want to make sure the timberlands they purchase are a good investment. To do so requires a significant amount of due diligence, both on the ground and in the office. On the ground, buyers will want to confirm the number, age and types of trees on the property through a timber cruise or some other type of inventory verification. They will also want to hire an environmental specialist to confirm there are no environmental issues or endangered species that could materially impact the use of the property as timberlands. Buyers will want to verify the income being produced by the property – income that can come in through a myriad of ways: supply agreements for the timber, surface use agreements and easements for the minerals on the property, and recreational leases, among others. The due diligence should also include determining whether there are any restrictions on the property, such as conservation or mitigation easements, that could limit the activities conducted or harvesting of timber on the property. As timberlands can often be owned by families for many generations, confirming the title ownership of the property is vitally important. In large tracts where normal surveying is not practical, new mapping technology or drone services can be utilized to confirm the boundaries of the property being purchased.

## Aren't timber companies the "bad guys" who cut down the rainforest?

Our clients aren't involved in cutting down the rainforest, and they are very attuned to harvesting and maintaining the forests in a sustainable fashion. For every tree our clients harvest, they typically plant at least one more. U.S. forests are protected by many recognized certifications and laws, such as the Forest Stewardship Council and the Sustainable Forestry Initiative. Federal laws, such as the Clean Water Act, the Clean Air Act, the Endangered Species Act, the Migratory Bird Treaty Act and the Coastal Zone Management Act govern forestry practices in woodlands and swamps. Further protections exist at the state level through water quality and best management practices enforced by state forestry and regulatory agencies.

According to the Georgia Forestry Commission, commercial timberlands in Georgia grow 19 million tons more wood each year than is harvested, resulting in growth exceeding removals by 38%. Because the net growth of Georgia's forests has consistently exceeded net removals, the volume of timber in Georgia is greater now than it was in the 1930s! Providing paper and other forest-created products generates jobs and income for millions of Americans. So, feel free to print out those emails, without any guilt.

## Who owns the forest?

In the last 35 years, owners of private timberlands in the U.S. have evolved from individuals, families and industrial ownership into a diverse group of ownership entities that include families, institutional investors, real estate investment trusts (REITs) and conservation organizations. The biggest change has been the decline of industrial timberland ownership and the rise of institutional timberland ownership.

## Why would a REIT own a forest?

Timberlands emerged as an attractive investment option for institutional investors in the early 1980s due to the passage of the Employee Retirement Income Security Act (ERISA) which, among its many measures, pushed private pension funds to diversify their portfolios beyond ownership of equity and fixed

income instruments. On the sale side, changes in the tax laws in 1986 caused industrial owners to lose favorable capital gains tax rates to income generated from timber harvesting. Since then, virtually all large publicly traded forest products companies have either sold most or all of their timberlands, often to institutional investors, or converted themselves to timberland REITs. Timberland REITs have shares that are either publicly traded or privately held, maintain a special tax designation for corporations that invest in real estate, such as commercial properties, farms or timberland, and offer the advantage of facing little or no corporate income tax relative to traditional C corporations. Institutional investors also often hire forest professionals, called timberland investment management organizations (TIMOs), to look for, purchase, manage and sell timberlands on their behalf. While we have represented a number of individuals in buying and selling timberlands, most of our transactions are for TIMOs and REITs.

## Why do lawyers need to be involved if it's just a bunch of trees?

Commercial real estate lawyers who specialize in timberlands advise their clients in connection with negotiating timberland purchase and sale agreements, loan agreements and related documentation, conservation easements, timber deeds, timber management contracts and wood supply agreements. In addition to commercial real estate lawyers, a timber practice also includes tax, corporate and environmental lawyers who advise clients on structuring entities to acquire timberland properties, in negotiating investment management agreements with their investor clients, in complying with the Hart-Scott Rodino Act and in dealing with the often complex environmental and endangered-species issues facing a timberland investor.

## Is it true that SGR was involved in the "largest land deal since the Louisiana Purchase"?

Yes. In 2006-2007, International Paper sold almost six million acres of its timberlands for several billion dollars. SGR had a couple of clients who bought significant portions of that property – over one million acres valued in excess of a billion dollars.



**Mark Pottorff** is a partner in and head of SGR's Atlanta Real Estate Practice. He advises in commercial real estate matters, with substantial experience in timberland acquisitions and dispositions nationwide and abroad. [mpottorff@sgrlaw.com](mailto:mpottorff@sgrlaw.com).



**Matt Moore** is an associate in SGR's Real Estate Practice. He represents lenders and developers in commercial real estate lending transactions and general real estate sales, purchase and leasing transactions. [mmoore@sgrlaw.com](mailto:mmoore@sgrlaw.com).