



MEMORANDUM

TO: Attorneys whose clients are interested in restricting development rights to farmland by devise

FROM: LouAnna Perkins, Esq., General Counsel, Maine Farmland Trust

DATE: April 14, 2016

Here are two examples of language that can be included in a client’s will, to authorize the Personal Representative to protect farmland from development prior to its being distributed or sold. Because the specifics vary with each farm or farmland owner, we recommend that the client meet with a representative of Maine Farmland Trust (“MFT”) to discuss the matter. There is no charge for this service. We are happy to have the client’s attorney attend such meetings, or in the alternative, we can speak with the attorney when general terms have been discussed and a general plan has been laid out.

(Less Specific)

I hereby direct my Personal Representative to convey to Maine Farmland Trust a conservation easement, as defined in the Conservation Easement Act, at Title 33, Maine Revised Statutes (1989), Sections 476 through 479-C, inclusive, as amended, restricting my *[real property as described in deed recorded at __ Registry of Deeds in Book __, Page __ – or other such description as would make clear the intent of this provision]*. The conservation easement shall prohibit division of the property into separate parcels or lots or shall limit such division, and shall extinguish all development rights except as may be reasonably related to the *[continued]* operation of the property as working farmland *[and forestland]*. In any event, the primary purpose of the conservation easement shall be to protect the agricultural resources of the property, and keep the land available for agricultural production into the future.

(More Specific)

I hereby direct my Personal Representative to convey to Maine Farmland Trust a conservation easement, as defined in the Conservation Easement Act, at Title 33, Maine Revised Statutes (1989), Sections 476 through 479-C, inclusive, as amended, restricting my *[real property as described in deed recorded at __ Registry of Deeds in Book __, Page __ – or other such description as would make clear the intent of this provision]* to agricultural *[including forestry]* use. The conservation easement shall allow no additional residential or commercial development, except that additional agricultural structures *[and additional residential structures for farmworker housing]* may be allowed within a __ -acre Farmstead Area to be located around the existing residential and agricultural structures on the property. Repair and reasonable enlargement or replacement of the existing residential structure(s) shall be allowed, provided that use shall be for single-family residence(s). The conservation easement shall allow no division, subdivision, partitioning or other conveyancing of the property in separate parcels or lots *[optional : except upon the conservation easement holder’s approval; or: shall allow for limited*

*division consistent with the agricultural purposes, etc]*¹. The primary purpose of the conservation easement shall be to protect the agricultural resources of the property, and keep the land available for agricultural production into the future.

Attorneys please note:

For more specific language, please consult with MFT to develop an easement outline that can be incorporated into the will by reference. Also, it should be noted that land trusts generally request a contribution toward stewardship of conservation easements they accept. Wills devising a conservation easement should also include a bequest for this purpose, when possible. (Contact MFT for more specific information).

¹ For larger farmland parcels, allowance for one or more divisions can sometimes be desirable. Consult with Maine Farmland Trust for further information.