Beginning Farmer Center

Resources to help our next generation of farmers

Real Property Ownership

Real property is land and any structure affixed to the land. The way a deed is written determines ownership rights in real property. It is important to know your ownership rights as they determine how the land may be transferred now and in the future.

Tenancy in Common: Two or more owners have a separate but undivided interest in the property. Each has the right to possess the entire property and cannot exclude the other owners. For example, if Brother and Sister own eighty acres as tenants in common, each has half interest in the entire eighty acres. They cannot decide that Brother has full interest in the east forty and Sister has the full ownership of the west forty because their interests are undivided. It would take an action for partition in court to separate ownership rights into specific halves of the whole property.

Owners as tenants in common also may have unequal rights to land. One owner may have a one third interest and the other a two-thirds interest or three owners may have one half, one fourth, and one fourth interests. Each owner may transfer his/her interest in the property during life or by will, and the new owner will have the same undivided interest as the transferor. The value of an interest transferred by will is included in the taxable and probate estate.

Joint Tenancy: Two or more owners have separate but undivided interests in the property. Owners also have a right of survivorship: on the death of one owner, the deceased owner's interest is divided equally to the surviving owner(s). The transfer mythically takes place a millisecond before death, and therefore cannot be transferred by will. The property avoids probate but is included in the taxable estate. Creditors of the deceased will not be able to reach the property.

Joint tenancies are easily destroyed resulting, in a tenancy in common without rights of survivorship. If one joint tenant sells his/her interest in the property, the new owner becomes a tenant in common with the other owners.

Creditors can reach property held in joint tenancy during the life of the owner.

Joint tenancy between spouses

- *One-half of value of property included in estate of first-to-die; survivor gets step-up in basis*

Joint tenancy between non-spouses

- *All of value of property included in decedent's estate*
- *Except to extent survivor contributed to acquisition*

Life Estate is created when a property owner deeds property to an heir but first reserves a life estate for a third party. The recipient of the life estate owns the property for the duration of his/her life but cannot transfer the property upon death because it has already been deeded to an heir. Property owned in life estate will avoid probate because the owner has no right to transfer the property on death; however, because the owner had full use and enjoyment of the property during life, it will be included in his/her taxable estate. The heir acquires legal interest in the property after the death of the owner of the life estate. The heir is called a "remainderman" and his/her remainder interest can be pledged, transferred, or attached. Also, the remainderman acquires a stepped-up basis on the death of the life tenant.

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