Illinois Inheritance Laws, Wills, And Joint Tenancy

Some Points For Illinois Farmers

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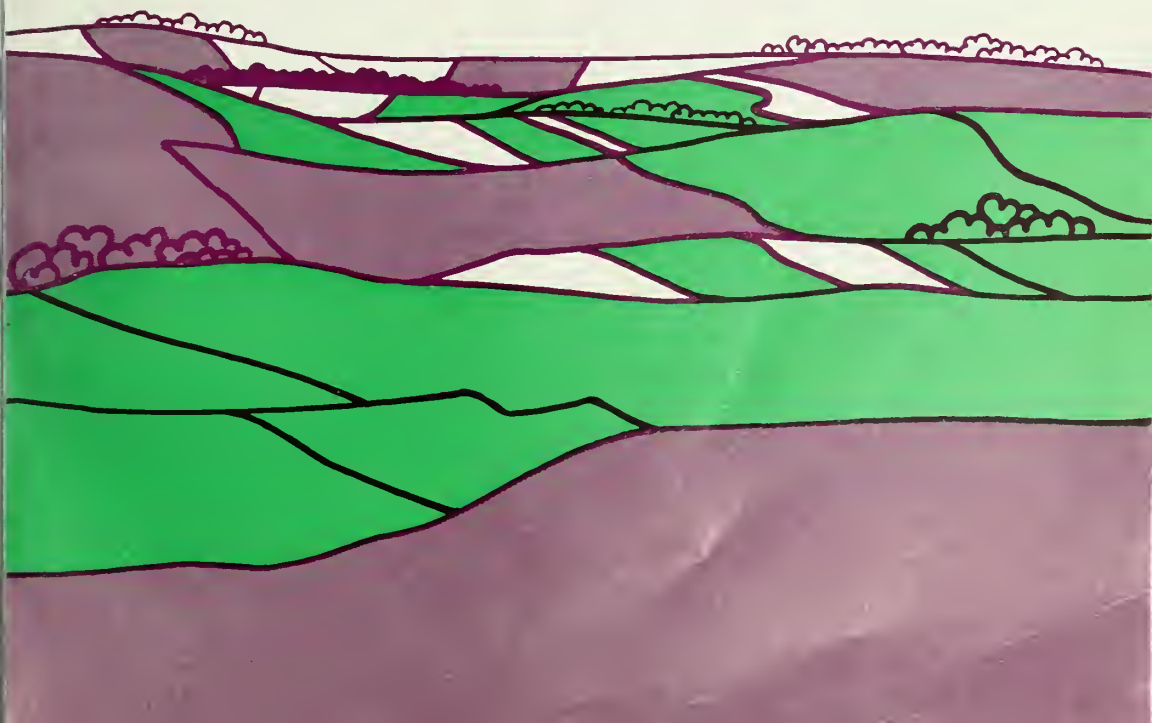

MOST FARMLAND CHANGES HANDS each generation through inheritance. If an owner has prepared a will or placed his property in joint tenancy, the property is distributed as he has specified. If not, it goes to his nearest relatives, according to the laws governing descent of property; these laws may or may not operate according to his wishes.

This circular tells you briefly how the laws of descent operate and what advantages you can gain by using a will or joint tenancy to distribute your property.

ILLINOIS INHERITANCE LAWS

Rights When No Will Is Left

If an owner dies intestate — without leaving a will — the laws governing the descent of property operate as shown by the table on page 3. Complete title interests in both real and personal property are taken by the heirs.

The chief distinction between real property and personal property is that real property is relatively immovable. Land and the improvements permanently attached to it — barns, fences, wells, tile lines, and similar features — are regarded as real property. Personal property includes such items as equipment, trucks, animals, and grain in storage.

As of January 1, 1972, the Illinois General Assembly abolished dower interests in real estate.

Homestead Property

A homestead, to the extent of $10,000, is allowed each householder having a family. This interest is not subject to judgment, sale, or law of descent and continues for the benefit of a surviving wife or husband. However, creditors generally can force the sale of a homestead and take the excess above $10,000.

Rights of an Adopted Child

A child who has been lawfully adopted has the same inheritance rights as a natural child. Similarly, the adopting parents inherit from the child as though the child were their own. There is one exception to this: property received by the child from his natural parents or relatives goes back to them upon his death if he has not left a will.

Rights of a Stepchild

A stepchild inherits from his natural parent (or parents, if divorced), but does not inherit from a stepparent unless the child is legally adopted by the stepparent.

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WILLS

Advantages of a Will

If expressed in a will, your special desires take precedence over the laws of descent. You as a husband, for example, may feel that your wife should inherit all of the real estate instead of having two-thirds of it go by law to your young and inexperienced children. Or you as a wife may want to make some provision for your mother rather than

Descent of Property by Illinois Law When No Will Is Left

Surviving relatives	Distribution of property
Wife or husband, and children	⅓ to wife or husband; ⅔ to children[a]
Wife or husband, but no children	All to wife or husband
Children, but no wife or husband	All to children equally[a]
Only parents, brothers, sisters, grandparents, or their descendants, and collateral heirs[b]	Parents, brothers, and sisters share equally[c]
Only grandparents or their descendants, great-grandparents or their descendants, and collateral heirs	(a) ½ to maternal grandparents;[d] (b) ½ to paternal grandparents.[d] When there are no relatives in (a), then all goes to those in (b), and vice versa.
Only great-grandparents or their descendants, and collateral heirs	(a) ½ to maternal great-grandparents;[d] (b) ½ to paternal great-grandparents.[d] When there are no relatives in (a), then all goes to those in (b), and vice versa.
Only collateral heirs	Shared equally by nearest kindred of deceased
No relatives	All real property goes to the county in which the land is located; all personal property goes to the county in which the deceased resided.[e]

[a] If one of the children has died, his children share his part.
[b] Collateral heirs are relatives such as cousins, uncles, aunts, great-uncles, and great-aunts. Persons in the same and nearest degree of relationship to the deceased get equal shares when only collateral heirs survive.
[c] Descendants of a deceased brother or sister get the deceased's share. If one parent is deceased, the surviving parent gets a double share.
[d] If one has died, the survivor gets a double share; if both have died, their descendants share equally.
[e] If the deceased is not a resident of the state of Illinois, all the personal property goes to the Illinois county in which the property is located.

have all your property go to your husband and children as it would by law.

Without a will the law takes a rigid course. The same amount of property is given to a married, well-established daughter as to a juvenile and dependent daughter. An invalid and needy son gets no more than his healthy and prosperous brother. By making a will, you can exercise your judgment and provide for each member of your family according to his needs.

There are other advantages to making a will. You can name anyone you like to be the executor of your estate — someone, for example, with considerable business experience. So that heirs may be protected from any losses caused by mismanagement of an estate, the executor of the estate is generally required to provide surety on a bond. If you so state in your will, however, you can exempt your executor from this requirement. You can also, if your estate is large, manage sizable tax savings by the way you distribute your property.[1]

Formal Requirements

The maker of a will — the testator — must be of sound mind and memory and at least 18 years old. The will must be in writing, signed by the maker, and witnessed by no less than two persons. It is best to have at least three persons witness the will, since one of them may move away or die before the maker of the will dies. While a will can be "proved" without having the witnesses present in the Probate Court, it is easier to prove when they are there.

Drafting a Will

Since drafting a will requires knowledge of laws involving property titles, taxes, contracts, and inheritance, only a lawyer should draft your will. The following steps are recommended:

1. Decide in conference with your family how your property should be distributed.
2. Make a record of all the property you own and the way title is held, or, better still, let your attorney examine all your deeds, property contracts, and insurance policies.
3. Have your attorney prepare a rough draft of the will so you can study it at leisure and have it reviewed by your family.
4. After revising the rough draft to your satisfaction, have the attorney prepare the final will and let him supervise the signing and witnessing of it, for which there are strict legal requirements.

[1] For details concerning this point, see "Inheritance and gift taxes on Illinois farm property," by N. G. P. Krausz, Illinois Extension Circular 1062, which you can obtain from your county extension adviser or from the College of Agriculture, Mumford Hall, Urbana, Illinois 61801.

5. Ask your attorney to prepare two or three copies of the will — one to be signed and put away for safekeeping, a second that can be referred to at home, and (optional) one for your executor.

Appointing a Guardian for Minors

To cover the possibility that both parents should decease before their children are adults, parents may wish to provide for a guardian for their minor children. This can be done by naming a guardian in their wills.

Illinois allows two types of guardianships. A guardian of the person of a minor has custody and is responsible for the education of the minor. He influences such decisions as where the minor lives, where he goes to school, and what clothes he buys. A guardian of the estate of a minor has responsibility for the care, management, and investment of the minor's estate.

One person may be both the guardian of the person and the guardian of the estate, or there may be two separate guardians. A corporation may act only as guardian of the estate. A non-resident of Illinois may act only as guardian of the person.

Using a Trust for Minors

Instead of appointing a guardian of the estate in his will, a parent may prefer to create a trust for his minor children. The will then provides for the transfer of property to a trustee at the parent's death. The trustee manages or invests the property to provide income for the minor. Generally, trusts are more flexible than guardianships and may be continued after the child reaches age 18.

Amending a Will

You are free to amend your will at any time. Whenever an important change occurs, whether in your family, in your property holdings, or in inheritance tax laws, see how it affects your will. If you feel that the will should be altered, you can do so by a codicil — an addition at the end of the signed copy of the will. The codicil must be signed and witnessed in the same way as the original will. It is often better to rewrite the entire will, incorporating changes into the text.

How to Revoke a Will

If a person has made a will and wants to revoke it, he can do so in several ways:

1. By burning, by tearing into small pieces, or by obliterating it.
2. By making a new will, which automatically supersedes the former one to the extent that the wills are inconsistent or, even better, by clearly declaring in the new will that the former will is revoked.

3. By declaring in writing that the former will is revoked and by having that declaration signed and witnessed in the same way as the former will.

Other situations may partially revoke one's will. A divorce revokes gifts to the former spouse but usually does not affect other gifts in the will. Children born after a will is made usually share in the estate even though no specific provision is made for them.

Renouncing a Will

If an owner dies leaving a will, the surviving spouse (husband or wife) may renounce the will and choose to take the share provided by law. Often a will is renounced when it leaves less to the surviving spouse than the law allows. The statutory share is one-half of the entire estate if the testator has no descendants, or one-third if the testator left a descendant. To renounce a will, a surviving spouse must file a written instrument with the court within seven months of the admission of the will to probate.

Executors and Administrators

The maker of a will can name any person he wants to carry out the directions of the will. This person is called an executor. His duties are to preserve, manage, and settle the estate during the period of administration (usually 9 to 11 months, but may be longer if inheritance tax returns are filed). When a will fails to name an executor, or if no will has been made, the Circuit Court appoints someone, called an administrator, to do the work of the executor.

Unlike the executor, the administrator is always required to post a bond with surety to indemnify the heirs against any loss due to mishandling of the estate. Whether an executor or an administrator, the legal procedures involved in settling estates make it necessary to obtain legal assistance.

To qualify as executor of the estate of any decedent, a person must be of sound mind, a resident of the United States, and at least 18 years of age. In addition, a person must not have been adjudged an incompetent under Illinois statutes or have been convicted of an infamous crime. If a non-resident of Illinois is named as executor, he must designate a resident to be his agent for receiving notice and service of process. The court may require a non-resident executor to furnish a bond with surety.

An administrator must meet the same qualifications as the executor, with the added requirement that he must be a resident of Illinois. Any corporation qualified to accept and execute trusts in Illinois is qualified to act as administrator.

To serve as an administrator, certain persons are entitled to preference according to the following order:

1. The surviving spouse.
2. The children.
3. The grandchildren.
4. The father and mother.
5. The brothers and sisters.
6. The next of kin.
7. The resident heirs named in the will.
8. The person nominated by nonresident heirs in the will.
9. The public administrator.
10. A creditor of the estate.

If the person who is entitled to act as an administrator would rather not serve in that capacity, he has the privilege of nominating any other person to serve in his place.

A person not qualified to act as an administrator solely because of nonresidence can nominate an administrator in accordance with the above order of preference.

JOINT TENANCY

Joint tenancy is a form of co-ownership of property, whereby two or more persons own property together. It differs from other types of co-ownership in that a joint tenant becomes the sole owner of the entire property upon the death of the other joint tenant or tenants. This is called the *right of survivorship.*

There are two main differences between transferring property by will and by joint tenancy. First, a will takes effect only when the maker of that will dies, whereas joint tenancy is effective the moment it is made. Second, a will is not necessarily final in the assignment of property, since the maker can amend his will at any time, but once property is placed in joint tenancy, that transfer is final, unless the tenants agree to make further transfers.

Points to Consider About Joint Tenancy

If an owner plans to put property in joint tenancy, he should keep in mind that he has no assurance that his property will return to him upon the death of the other joint tenant, for a joint tenant can destroy the right of survivorship at any time — by sale, mortgage, partition, or by gift. If the right of survivorship is destroyed, the original owner of that property is left with only his own share upon the other tenant's death.

There are other things to consider about joint tenancy. Property in joint tenancy passes to the survivor without probate proceedings and without administration, except as the property is subject to state and federal taxes. Even when tax returns are required on property in joint tenancy, probate costs are usually less because no other administration is required. Also, since a surviving tenant has immediate title to the property, creditors of the deceased are prevented from asserting claims against the property.

On the other hand, there are possible disadvantages from joint tenancy when large estates are involved. Federal tax laws assume that the deceased owned all the joint tenancy property himself, and the entire property is taxed to him, unless the surviving tenant can prove that he or she contributed to the purchase price or that the property was originally taken in joint tenancy by gift or inheritance from someone other than the deceased. If a husband and wife have joint tenancy property amounting to more than $120,000 in value, there may be a double federal tax on part of it,[1] unless the disposal of the estate has been carefully planned.

How to Place Property in Joint Tenancy

To place real property in joint tenancy, you have to use a deed containing the words, "to _____ and _____, *not in tenancy in common but in joint tenancy.*" If a deed does not contain these or similar words, it conveys a tenancy-in-common title (the survivor takes only his own undivided share at the death of the other).

Placing personal property in joint tenancy involves a number of different procedures. Bank deposits, for instance, are in joint tenancy if made payable to two or more persons and if these persons sign an agreement permitting the bank to pay any one of them. Shares of stocks and bonds are in joint tenancy if issued in the names of two or more persons or their survivors, and if an agreement permitting payment to any one of the owners is signed by all of them. Other personal property may be placed in joint tenancy by a person's will or by a written statement creating a joint tenancy with the right of survivorship. If a husband and wife, for instance, wish to place a car in joint tenancy, they can do so by simply requesting the Office of the Secretary of State to issue the title in joint tenancy.

A word of warning should be said about safety deposit boxes. Simply placing the box in joint tenancy does not mean that the *contents* are in joint tenancy. If the contents are to be placed in joint tenancy, each item in the safety deposit box must be declared to be in joint tenancy and not in tenancy in common. If there is a separate statement to this effect, all the joint tenants should sign it.

[1] For information concerning this point, see Illinois Extension Circular 1062, "Inheritance and gift taxes on Illinois farm property," by N. G. P. Krausz.

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