

Farm Estate Planning – Do You Know What You Own?

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August 15, 2013

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**COOPERATIVE
EXTENSION**

Empowering People · Providing Solutions

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How Do You Own Your Property??

It Does Make A Difference!

Ownership Rights:

Can you sell it?

Can you “will” it?

Can you give it away?

How much will be in your estate at
your death?



Types of Property Transfers

- Sale
- Gift – lifetime
- By will
- Laws of intestate succession
- Surviving spouse-
 - Tenancy by the entirety
- Joint tenancy with right of survivorship
- By operation of law
 - Spousal rights
 - Involuntary transfers – foreclosure & bankruptcy
- Under a Power of Appointment
- Through a trust



Types of Ownership

Sole Ownership

Simplest form of ownership

One person has all of the present and future power to use, control, sell or otherwise dispose of the property

Usually all is in your Federal Taxable Estate



Types of Ownership

Consecutive Ownership

Life Estate

Life tenant

Remaindermen

Whether it is in your Federal
Taxable Estate depends upon how
it was created



Types of Ownership

Consecutive Ownership

Life Estate

Life tenant

Has right to possess & use the property (collect income) for life

At death of life tenant, property passes to the remainderman

Waste – cannot change use

Responsible for taxes, repairs, & insurance



Types of Ownership

Ownership Concurrent

Tenancy in Common

Two or more people own an **undivided fractional interest** in the property

May dispose of “your interest” w/o permission of others

Your fractional share is in your Federal Taxable Estate



Types of Ownership

Ownership Concurrent

Tenancy by the Entirety

This is a “right of survivorship” ownership between a husband and wife

This is the presumption in the NC law unless contrary intention is shown

One half the value is in your Federal Estate (not taxed! Marital Deduction)



Types of Ownership

Ownership Concurrent

Tenancy by the Entirety

Real property and mobile homes

Not subject to claims of a creditor of one spouse

Does not pass under the will!



Types of Ownership

Joint Tenancy with the Right of Survivorship

Two or more persons may own property in this manner

Bank accounts, CDs, Stocks, Bonds are types of property owned in this manner

Real property **CAN** be owned like this

Assumption that the **entire amount** of the value is in your Federal Taxable Estate except as proven otherwise

Right of Survivorship must be stated



What is a Trust?

- A legal arrangement by which a **grantor** transfers legal title of property to a **trustee** who holds and manages the property for the benefit of the **beneficiaries**.

Types of Trusts

- Living trust
- Testamentary trust
- Revocable trust
- Irrevocable trust

Uses for a Living Trust

- Provide financial management for the grantor's benefit
- Will substitute that provides privacy for intergeneration farm transfers
- Revocable trust
 - No tax consequences
 - Can be undone

Uses for a Testamentary Trust

- Provide financial support for surviving spouse while preserving farm assets for children
- Irrevocable trust (after testator's death)
 - Separate taxable entity
 - Difficult to modify for unforeseen circumstances

Advantages of Trusts

- Flexibility
- Control
- Solutions to difficult family and financial problems
- Potential tax benefits

Disadvantages of Trusts

- Expense
 - Cost of establishing and operating
- Complexity: Record keeping
- Loss of control of assets (irrevocable trusts)
- Income tax consequences (irrevocable trusts)

Tax Consequences of Irrevocable Trusts

- Maximum individual rate applied to income over \$11,350 (for 2012)
- May avoid tax if all income distributed (simple trust)

Owned Indirectly in a Business Organization

- Sole proprietorship
- General partnership
- Limited partnership
 - Family Limited partnership (FLP)
- Limited liability company (LLC)
- C corporation
- S corporation



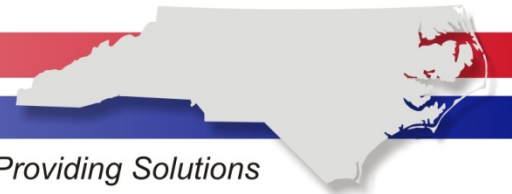
'Heir' Property

- Failure to probate at death
- Tenants in common
- Downside
 - Can't use as security for financing
 - Difficult to coordinate management
 - May be lost through partition



Nature of Minerals Rights

- Capable of being a separate estate from surface estate
- Presumption that surface estate includes mineral rights



Nature of Minerals Rights

- Importance of intent of the parties
 - Conveyances transfer ownership of the mineral estate
 - Lease does not transfer ownership of oil, gas, or minerals that have not been severed
 - A leasehold interest is a chattel real, a species of intangible personal property
 - Bankruptcy implications



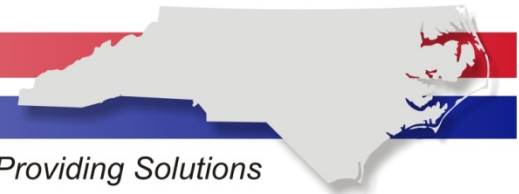
Nature of Minerals Rights

- May be used as security for a debt
- Rights to sand and gravel not a mineral right? (Cases inconsistent)
 - Profit a prendre in gross
 - Defense of laches applicable
 - Title passes only upon severance



Relationship Between Surface & Sub-Surface Estate

- Dominance of surface estate (apparently opposite rule in Texas)
- Reasonable use of surface estate
 - Limited right to compensation for surface and groundwater damages
- Limits ability of surface owner to obtain financing
- Limits ability of surface owner to convey conservation easement or participate in USDA conservation programs



Additional Resources

- Estate planning and farm transition
 - <http://www.ag-econ.ncsu.edu/faculty/feitshans/estate.html>
- National Timber Tax Website
 - <http://www.timbertax.org/>
- Rural Tax Education
 - <http://ruraltax.org/>
- Journal of Accountancy
 - <http://www.journalofaccountancy.com/News/20137097.htm>
- Heir property
 - http://www.lawyerscommittee.org/admin/community_development/documents/files/0003.pdf



Resources

- Faculty web page
 - <http://www.ag-econ.ncsu.edu/faculty/feitshans/feitshans.htm>
- NC Secretary of State
 - <http://www.secretary.state.nc.us/corporations/>
- National Agricultural Law Center
 - Business Organizations Reading Room
 - <http://www.nationalaglawcenter.org/readingrooms/businessorganizations/>
 - Estate Planning and Taxation
 - <http://www.nationalaglawcenter.org/readingrooms/estateplanning/>
 - Iowa State – Current Issues in Estate Planning
 - <http://www.calt.iastate.edu/epissues.html>

