Property Rights I: Descent and Distribution of Property and Wills
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PROPERTY RIGHTS I:

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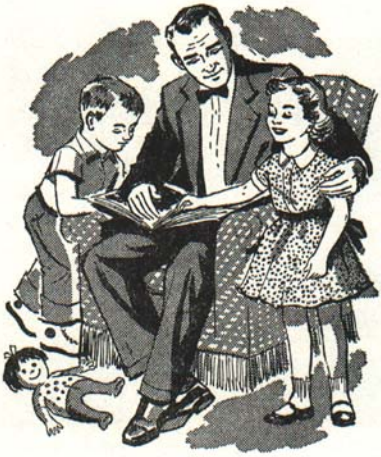

MICHIGAN STATE UNIVERSITY
Cooperative Extension Service
EAST LANSING

Property Rights I:

Descent and Distribution of Property, and Wills

Lesson Outline

*Prepared by Extension Specialists in Home Management**

People attach two meanings to the word "estate". In one sense it means a large piece of real estate. Another meaning, the one used here, refers to all the property that a person owns at his death — personal property as well as land.

This lesson is not intended to answer the complicated questions that arise in unsettled estates, questions which can only be answered by a well-informed lawyer. The lesson is designed to help those who have accumulated estates, or who are accumulating estates, to put their affairs in order so that, in the event of death, their property can be distributed according to their wishes and for the greatest benefit of all concerned.

I. What is meant by laws, property and estates.

Down through the ages, rules — which we now call laws — have been adopted to protect persons and their rights to the ownership of property.

The law has made specific provision for the property rights of persons according to their position in the family—husbands, wives, widows, children, and minors.

A. There are two kinds of property—real property (real estate) and personal property.

1. Real property consists of land and fixed improvements on land, such as buildings and fences.
2. Personal property includes all property other than land, such as stocks, bonds, money, bank accounts, livestock, machinery and farm equipment, feed and supplies, auto-

*Revision of material prepared by Olevia C. Meyer.

mobiles, furniture, clothes, jewelry. (These are sometimes called moveables.)

B. The property (both real and personal) which a person leaves at the time of death is referred to as an estate.
   1. The nature of the interest one has in property while living determines whether that property becomes a part of his estate.

C. When a person dies, his estate is administered under the direction of the probate court.
   1. If a person dies without leaving a will, he is said to die "intestate", and his estate is administered according to the laws of the state in which he has legal residence.
   2. If a person leaves a valid will at the time of death, he is said to die "testate", and his estate is administered according to his wishes as set forth in his will.
   3. Allowance for widow and minor children, expenses of administration, funeral bills, state and federal inheritance taxes, and debts are taken from the estate first.
   4. The remaining property then goes to the heirs according to the laws of the state in which the deceased was a legal resident, or is distributed according to the will, provided a valid will remains.

II. Division of property according to the law.

In a general way, the following are a few of the provisions of the Michigan laws on the descent and distribution of property.

A. Married man with child, children, or descendents. It is the same for a married woman, except that her husband does not have dower and homestead rights in her property. (Dower is a widow's right to the use for life of one-third of her husband's real estate. Homestead right entitles a wife to remain in the homestead for life, or until her remarriage, unless she owns a homestead in her own right. A widow may choose to take dower and homestead rights in special cases. She must make this choice in writing within 60 days after entry of order closing the estate to claims.)

Real estate

1. Wife, one-third, subject to the wife's right to take dower and homestead.

2. Child or children, two-thirds, divided equally. (Grandchildren take their deceased parent's share.)

Personal property

1. Wife, one-third. (Widow is allowed all wearing apparel, ornaments, household furniture, and $200 worth of other personal property. She is entitled to rent-free occupancy of husband's dwelling and reasonable allowance as fixed by the probate court until the estate is settled — up to 1 year.)
2. Children, two-thirds divided equally. (Grandchildren take their deceased parent's share.)
3. If only one child, child gets one-half and wife one-half.

A 1957 statute provides that there shall be no distinction between natural and adopted children with respect to rights and duties. (This means that adopted children and grandchildren inherit just as natural heirs of the same degree of kindred to the deceased.)

B. A married man without child, children, or their descendents.

Real estate

1. Wife, one-half, subject to wife's right to take dower and homestead.
2. Father and mother, or survivor, one-half.

Personal property

1. Wife, $3,000 plus one-half of residue.
2. Father and mother, or survivor, one-half of residue.

If no parents survive, their share is divided equally among brothers and sisters. (Nieces and nephews take their deceased parent's share.)

If there are no brothers and sisters or nieces and nephews, all property goes to the surviving wife.

C. A married woman without child, children, or their descendents.

Real estate

1. Husband, one-half.
2. Father and mother, or survivor, one-half.

Personal property

1. Husband, one-half.
2. Father and mother, or survivor, one-half.

If no parents survive, their share is divided equally among brothers and sisters. (Nieces and nephews take their deceased parent's share.)

If there are no brothers and sisters or nieces and nephews, all property goes to the surviving husband.

D. Widow or widower with child, children, or descendents.
   1. All real estate and personal property are divided equally among the children. (Grandchildren take their deceased parent's share.)

E. Unmarried man, woman, widow or widower without children or descendents.

   If parents survive

   1. All real estate and personal property go to the father and mother or the survivor.

   If no parents survive

   1. All real estate and personal property are divided equally among brothers and sisters. (Nieces and nephews take their deceased parent's share.)

   If no parents nor brothers and sisters survive

   1. All real estate and personal property are divided equally among next-of-kin, of equal degree.
   2. If there is no kin, all property goes to the state.

III. The effect of title upon the transfer of property at the time of death.

A. If a man owns real estate solely in his own name, it becomes a part of his estate at the time of his death.

B. If the deceased holds property in co-ownership, the determination of whether his share will become a part of his estate is governed by the kind of co-ownership which existed.
   1. If two persons own land together as tenants in common and one dies, the latter's share of the property becomes a part of his estate.

2. If co-owners hold title to property as joint tenants, when one dies, the survivor becomes owner of the entire interest in the property. Nothing passes to the estate of the deceased. Mortgages may be held in joint tenancy.

C. Bank accounts:
   1. If owned solely by the deceased, become a part of his estate.
   2. Bank accounts held in the names of two people, payable to either or the survivor, go solely to the survivor upon the death of one of the parties, not to the estate of the deceased.

D. Safe-deposit boxes:
   1. If held in joint ownership, can be opened by the survivor in the case of the death of one of the owners in the presence of the county treasurer.
   2. If held as sole owner, cannot be opened except by the administrator or executor (the person named to settle the estate), and in the presence of the county treasurer.

E. Government bonds:
   1. If owned solely by a decedent (the deceased), they go to his estate.
   2. Bonds held in co-ownership—title of registration reading "John A. Doe or Mary E. Doe"—go to the survivor as the sole owner if either dies.
   3. A beneficiary named on a bond—title of registration reading "John A. Doe, payable on death to Mary E. Doe"—will become the sole owner upon the death of the registered owner.

F. Life insurance:
   1. One may name his estate as the beneficiary to his life insurance, in which case it becomes a part of his estate upon his death.
   2. Or, a person may be named beneficiary, in which case the proceeds go to the person named and do not become a part of the estate.

G. Personal property:
   1. If held solely in the name of the owner, it becomes a part of the estate.

2. Co-ownership of tangible personal property does not automatically carry survivorship rights. Unless there is an express written agreement about survivorship, each individual holder's share becomes a part of his estate. The same is true for some kinds of intangible personal property, such as bank accounts.

No Michigan state inheritance tax is levied on property the title of which is held in joint tenancy by husband and wife in the case of the death of one of them.

IV. The family's needs determine the course of action.

The law provides the rules for the transfer of property in estates in a systematic manner. However, a person may make other distribution of his property through a will.

A. Each family has its own problems and situations which need to be considered by the parents when planning for the disposal of their property.
   1. Some children may have received a part of their inheritance.
   2. One or more children may have made special sacrifices to help the parents.
   3. One of the children may be handicapped and should have special provision made for his or her care.
   4. There may be minors who must have their interests and education looked after until they become of age.

If families have special problems regarding the welfare and security of any of the members, allowances should be made for the disposal of property in ways that really promote the welfare and happiness of the whole family.

B. Transfer of property by will.
   1. A will provides a means for you to:
      a. have your own wishes executed as to distribution of your estate.
      b. develop understanding of the family's financial situation on the part of all members — and avoid friction among heirs when an estate is settled.

c. save on estate taxes.
d. accomplish charitable acts.
e. name the executor of your choice.
f. nominate a guardian for minor children.

2. Who may make a will?
   a. Any individual who has reached the age of 21 and is of sound mind.

3. When should a will be made?
   a. At any time during life after 21st birthday, but while the individual is in good health. (Don't wait — make your will now, and keep it up-to-date.)

4. Steps in making a will.
   a. Make a record of all property owned, and a list of heirs.
   b. Check titles to real estate, mortgages owned, and bonds to determine if they are owned solely or jointly. Check beneficiary clauses on life insurance policies.
   c. Decide what distribution of property will best serve the needs of all concerned.
      1) The will of a young married person or a single man or woman may be simple, merely naming an executor and turning all property over to husband or wife, parents, or sisters and brothers, whatever the case may be.
      2) An older person with grown children may want to specify in detail the disposal of all property.
      3) In cases where dependent or handicapped persons must be provided for, the testator may wish to set up a trust fund, life interests in property, and so on. Competent legal advice is needed to work out such arrangements.
   d. Employ a lawyer. (One with probate experience is best qualified to write wills.) This is not a legal requirement but a safeguard.
   e. Select an executor. A person who knows and understands the family situations will be most likely to take care of the best interests of all concerned. A trust company can be named executor if the testator so wishes.

f. It is a good plan to have the attorney prepare a rough draft of the will. It can be taken home and studied a few days to be sure it meets the needs and wishes of the testator.

g. A will must be in writing to be legal and it must be signed by the testator. His "mark" will be accepted.

h. Two persons, preferably permanent residents of the community and younger than the testator, and who do not benefit by the terms of the will, should be selected as witnesses to the will.

1) Neither witness should be named a beneficiary in the will.

2) One witness may be named the executor of the will.

3) Witnesses must be competent to testify in probate proceedings.

i. It is well to have at least two copies made of the will. File the original with the probate court or put it in a safe deposit box. The **copy** may be kept at home or you may choose to leave it with your attorney. (The original should never be kept at home — and **only the original will should be executed.**)

j. Keep the will up to date. Family situations and property holdings change from time to time and the will should be changed to best meet the needs of all concerned.

1) A "codicil" may be added to change or make additions to a will. It must be signed and witnessed the same as the will.

2) Another will may be made. It is necessary to make a statement at the beginning of all wills revoking any and all previous wills.

5. What makes a will or certain parts of it invalid?

a. A will dated later than the one in question.

b. Lack of enough witnesses or failure of witnesses and the testator to sign in each other's presence.

c. Tearing, burning, cancelling or obliterating all or any part of the will by the testator or another under his direction with the intention of revoking all or a part.

d. Additions or revisions without proper signature and witnesses.

e. Inconsistent provisions in the same will may make the testator's intentions so uncertain as to invalidate these provisions.

f. The sale of any property after the will was made, if specifically devised or bequeathed in the will.

g. Under the law, a wife can take more if her husband wills her less than the law allows her. (See pages 4 and 5, II A.)

6. If a child of a testator was omitted by mistake or accident, he receives the share he would have been entitled to if no will had been made.

V. Legal procedure when a will exists at the time of death.

A. Within 30 days after the custodian of the will learns of the death of the testator, the will must be presented to the county probate court.

B. The court calls one witness to the signing of the will to testify that he saw the testator sign the will.

C. Whether there is a will or not, any interested party may petition to have the estate of a deceased settled. The court sets a date for the hearing, publishes notices and notifies all interested parties.

D. The court appoints an administrator or approves the executor, if one is named in the will.

1. The court fixes the bond for the executor or administrator.
2. Standard fees for executors or administrators are set by Michigan law.

E. A husband cannot disinherit his wife in his will. The wife has the right to choose to abide by the will or take her share allotted by law, in case the will leaves the wife less than the law allows. A wife may disinherit her husband according to Michigan laws. (A testator may disinherit a child by making it evident in the will that the child was not overlooked.)

F. A waiting period after the appointment of an executor or administrator of not less than 2 months and not more than 4 months is allowed in Michigan for creditors to present claims against the estate.

G. As a rule, it takes from 6 to 12 months to probate a will and settle an ordinary estate. Very large estates take longer.

VI. Transfer of property while living.

A. The transfer of property between living persons is considered a gift for the purposes of taxation.

B. Sometimes persons, especially the last surviving parent, transfer property directly to the children.

1. This method of property transfer is left to the judgment of the persons rather than dictated by law.

VII. Many Michigan farm families are interested in keeping the farm in the family and are looking for a satisfactory method of making such transfer.

A. Considerations that must be given before transferring the farm to an interested heir.

1. Some member of the family, such as a son or son-in-law, should be interested in continuing the operation and eventually the ownership of the farm.

2. The farm must be of such acreage and productivity as will provide an economic size of business. (An efficient farm probably should provide not less than 400 days of productive work per year.)

3. The value of the farm should be a negotiated value in line with family goals and wishes.

4. The matter of transferring the farm to the interested heir should be talked over with all heirs, and a satisfactory method of transfer should be decided upon and agreed to by all concerned.

5. The method of farm transfer should be put into written form by a lawyer.

B. Methods of transferring the farm to an interested heir.

1. By laws of descent and distribution.

a. It is only in exceptional cases that this method will work satisfactorily, since, under the laws of descent and distribution, there is no satisfactory way provided of again combining the interests in the farm.

b. Some drawbacks to this method.

1) The operating heir often must wait until he is middle aged or older before he can become the owner of the farm.

2) It would no doubt be to his advantage to go out and buy another farm when he is ready to make the purchase.

2. By will.

a. A will, if properly drawn, can be essentially an option permitting the son to purchase the farm by making certain payments to the other heirs.

b. A will may serve as a temporary solution in case the heir has not definitely made up his mind that he wants to take over the home farm.

c. The greatest drawback to this method is that the interested heir does not have the security of full ownership and title until after the death of both parents, because the parent may revoke the will at any time.

3. By sale or gift. One of the chief advantages of the following methods of transfer is that the heir gets possession of the farm at an earlier age.

a. Sale – Title Delivery – Mortgage.

1) After an agreement for sale, a deed is given by the seller and the buyer gives back a mortgage to secure the unpaid balance of the purchase price, if any. Usually when the cash payment is 25% to 30% or more of the purchase price this method is used.

2) The heir or buyer obtains title and possession at once, subject to the mortgage.

b. Sale – Title Retained – Land Contract

1) When the cash payment on the purchase price is small, for example, 10% to 15%, the land contract method is generally used.

2) The land contract is an agreement between buyer and seller providing for a down-payment, monthly payments, interest rate, and that the seller will convey title to the property when the purchase price is

fully paid. Sometimes the land contract will provide that when some substantial part (say 40% to 50% or more) of the purchase price has been paid seller will deliver title and take back a mortgage for the unpaid balance.

3) The heir or buyer receives possession at once but delivery of title is deferred.

c. Farm given to heir, subject to life lease or life estate.

1) The parents transfer the farm to the interested heir by deed, subject to a life lease or life estate for themselves. There should be a clause in the deed stating that the parents reserve the right of use and all returns from the farm as long as they live.

2) Under this method of transfer, the parents can rent the farm to the heir, but the heir has the security of knowing that he holds the title to the farm.

3) The parents lose some of their security in that:

a) They cannot sell or mortgage the farm.

b) They cannot alter buildings, remove timber, etc., without the consent of the son, unless these rights are specified in the deed.

4) This method works best where parents have other property from which they can get at least a part of their support, and from which other heirs may inherit their share of the estate.

VIII. Summary:

A. Rules, known as laws, have been adopted for the protection of an individual's rights to property and for the administration of his estate upon death.

B. The nature of the title held to property determines whether it becomes a part of the estate or not, upon the death of an individual.

C. Families have special problems which need to be considered in the administration of estates. These special cases cannot be considered under the general laws of the state, but an individual's will may be exercised in determining the distribution of his property.

D. Every individual who is of sound mind and has reached the age of 21 years, may make a will. The will should be made while the individual is in good health. Consult a lawyer to advise you and draw up the will. The law requires that it be signed by the testator and two witnesses. The original copy can be filed with the probate court or kept in a safe-deposit box.

E. There are several ways of setting up the necessary legal procedure to keep the farm in the family, where this is desirable.
   1. A will can be made for this purpose.
   2. Or, it can be transferred to the interested heir by gift or sale, either by a sales agreement, land contract, or life estate.

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