WHO OWNS YOUR PROPERTY?

Paul Goeringer, Extension Legal Specialist
WIA Wednesday Webinar
Nov. 12, 2014
Disclaimer

This presentation is intended to provide general information and should not be construed as providing legal advice. It should not be cited or relied upon as legal authority. State laws vary and any attempt made to discuss laws of states other than Maryland is for general information to help the viewer better understand Maryland law. For advice about how these issues might apply to your individual situation, consult an attorney.
University of Maryland MPower

The University of Maryland: **MPowering the State** brings together two universities of distinction to form a new collaborative partnership. Harnessing the resources of each, the University of Maryland, College Park and the University of Maryland, Baltimore will focus the collective expertise on critical statewide issues of public health, biomedical informatics, and bioengineering. This collaboration will drive an even greater impact on the state, its economy, the job market, and the next generation of innovators. The joint initiatives will have a profound effect on productivity, the economy, and the very fabric of higher education.

- [http://www.mpowermaryland.com](http://www.mpowermaryland.com)
Agriculture Law Education Initiative

The Agriculture Law Education Initiative is a collaboration between the University of Maryland Francis King Carey School and College of Agriculture & Natural Resources, University of Maryland, College Park. Through the University of Maryland Extension - the statewide, non-formal agriculture education system - the collaboration partners with the School of Agricultural and Natural Sciences, University of Maryland Eastern Shore.

Website: www.umaglaw.org
Twitter: @MdAgLaw
Facebook: www.facebook.com/MdAgLaw
Email: umaglaw@umd.edu
Thank you

- Presentation is based on one originally developed by Lori Lynch while she was in AREC.
Want to learn more?

• Don’t like listening to me?

• Want to just read this instead of listening to me?

• This material is available online at www.aglaw.umd.edu/blog/forms-of-property-ownership-an-important-feature-of-your-estate-plan-or-business-organization
Overview

• Two types of property:

1. Real Property
2. Personal Property

All photos used are by Edwin Remsberg unless marked differently
Real Property

• Real property is defined as “land or anything growing on, attached to, or erected on it, excluding anything that may be severed without injury to the land.” (Black’s Law Dictionary).

• For example, your farmland, growing crops, barns, house, etc
Personal Property

• Personal property is defined as “any moveable or intangible thing that is subject to ownership and not classified as real property.” (Black’s Law Dictionary).

• Ex: Harvested crops, tractor, livestock, etc.
Why is Ownership Important?

• How many of you have looked at your property deeds?
  • Is going to tell you how you own the property.
  • Going to let you know your rights in the property.
Why is Ownership Important?

- Estate planning issues with property ownership
  - The goal of your estate plan is fulfill your goals at death on who should get your property.
  - A will is just one tool to use in achieving your goals.
  - Using different forms of property ownership maybe another way to achieve these goals

Not by Edwin Remsberg
Forms of property ownership

1. Fee Simple (or fee simple absolute)
2. Life Estates
3. Tenancy in Commons
4. Joint Tenancy (Joint Tenancy with Rights of Survivorship)
5. Tenancy by the Entirety
INDIVIDUAL OWNERSHIP
Fee Simple

- Fee simple is highest form of property ownership – sometimes called fee simple absolute

- With FS can:
  - Can sell and give away
  - Can divide the land
  - Can make all decisions
  - Receive all the income and interest
  - Can be passed on to children or not
  - Liable for all obligations – mortgage, property taxes, these obligations passes with the land if the land is used as collateral for the loan
Fee Simple

- Owned by only 1 person
- Only limitation on rights discussed earlier is governmental restrictions
NOT EXACTLY OWNERSHIP (BUT CLOSE)
Life Estate

- Holder of interest called “life tenant” and not really an owner.
- Owner owns the property for his or her lifetime and at death property goes to remainderman.
- Can exclude others from the property even the one who will receives the land once owner dies.
- Collect all the income and interest in the property.
- Can be transferred (leased) but can not be passed on to children.
  - Difficult to sell because one does not know the term of ownership – could be an hour or could be 20 years.
Life Estate

- Can not use for collateral; owner might die before loan is paid and once dead, property shifts ownership
- Economic waste – if the income from property less than the expenses for taxes and interest on the mortgage – courts may allow a sale.
CO-OWNERSHIP
Co-Ownership

- Requires more than 1 person to own an interest in the property
- Co-owners will each have:
  1. Right to access property
  2. Demand an accounting of profits
  3. Contribute to costs
Co-ownership

• Important thing to remember and you will see:
  • All forms of co-ownership are not equal

• Typical forms are
  1. Tenancy in common
  2. Joint tenancy
  3. Tenancy by the entirety
Tenancy in Common

- Requires two or more owners called “Tenants in Common” and each owns an undivided interest in the property.

- Although hold undivided interest, can have unequal rights in property.
  - For ex: Stacy and Sarah are tenants in common to Blackacre. Stacy owns 60% and Sarah the remaining 40%.
  - Can convey their interest in the land either by sale or by inheritance – Stacy can sell or pass on her 60% of the property.
  - Can mortgage her share or secure a loan – however cannot sell other owners’ interest. Thus if Stacy default on the loan, bank only forecloses on 60% of the property.
Tenancy in Common

- Has no rights of survivorship
  - If Stacy predeceases Sarah, then Stacy interest would pass under the terms of Stacy’s will or under state intestacy laws.
  - Other forms of co-ownership will have rights of survivorship.

- Typically created with simple language “to A and B.”
Joint Tenancy

- Holder of joint tenancy is called *joint tenant*

- Each joint tenant will hold an undivided and equal interest in the property.

- Each joint tenant has the rights of survivorship
  - Right of survivorship allows the surviving joint tenants to claim the predeceasing joint tenants interest
  - Last standing joint tenant will own property in fee simple.
Joint Tenancy

• To create needs four unities:
  • Time – must acquire at same time
  • Title – must have same title to property
  • Interest – must own equal share
  • Possession – equal right to possess the whole property
Joint Tenancy

• Can be used to avoid the cost and time involved in the probate process – for married couple or business partner.

• People can sell their share of the property. If one transfers or sells the interest in the land before death, it severs survivorship rights (i.e. ends joint tenancy) for new owner.
  • Remaining joint tenants would continue to be joint tenants with each other.
  • New owner would be tenant in common with the joint tenants.
  • If only two joint tenants, then ends the joint tenancy and both tenants are tenants in common.
Joint Tenancy

- Joint tenancy is created through language in the deed such as:
  - To A and B as joint tenants with rights of survivorship and not as tenants in common
  - The language needs to make clear not creating a tenancy in common
Tenancy by the Entirety

• Similar to joint tenancy in that tenants have rights of survivorship and own equal and undivided interest.

• Not recognized by all states, is recognized in MD.

• Can only be created by a married couple and all property owned by a married couple is presumed to be in a tenancy by the entirety.
Tenancy by the Entirety

• One spouse can not unilaterally sever the tie.

• Can foreclose only if both spouses signed loan documents – some states permit banks to foreclose on $\frac{1}{2}$ interest of debtor spouse.

• Both must execute sales agreement to sell property.

• Divorce will terminate and both parties will become tenants in common.
Property Titling in Estate Planning

• Think back to my Stacy and Sarah example with tenancy in common.
  • As tenants in common, Stacy and Sarah each have the ability to pass their interest in Blackacre on through their estate plans.
    • Very important if neither are related and want their interest to go to their own heirs.
    • But what if Stacy and Sarah are related (mother and daughter)?
  • Potentially may turn tenancy in common into joint tenancy (especially if mother wants daughter to get Blackacre at her death).
    • One way to transfer interest outside of will.
    • What if daughter predeceases mom?
Wrap up

- Various forms of property titling will have impacts on estate planning issues.
  - Do you own it on your own? Fee simple
  - Do you only hold a life estate?
  - Do you own the property as a co-owner?
    - Does the co-ownership contain a right of survivorship?
    - Are you the last owner surviving?

- Remember each form of ownership can be used for both personal and real property.
Wrap up

- Before talking with your estate planning attorney, look at how you own all your property (both personal and real).
  - Will help your attorney understand how to develop the plan based on your goals.
  - Working on a checklist to help you pull the right documents together before going to see your attorney (check out aglaw.umd.edu to know when it is available).
THANKS ANY QUESTIONS?

Contact info:
Website:  www.extension.umd.edu/aglaw
Blog:  www.aglaw.umd.edu
SSRN:  http://ssrn.com/author=1948372
Phone:  301-405-3541
Twitter:  @AgLawPaul
Email:  lgoering@umd.edu