



Cornhusker Economics

Who owns this? Ways that property can be owned and transferred in Nebraska

Estate planning is a process. One of the first steps of this process is gathering a list of assets and reviewing the titles to determine the legal ownership of each piece of property. There are several ways that a piece of property can be owned in Nebraska: sole ownership, tenancy in common, joint tenancy, life estate, and term interest. Each of these types of ownership is important to understand, especially when in the process of planning your estate. Assets with different types of ownership may transfer outside of a will.

Sole ownership

Sole ownership indicates that the property is owned by one individual or entity who has the unfettered right to transfer that property. When an individual has sole ownership, distribution of that asset at death is determined by the owner's will or the state's intestate succession laws through the probate process.

Although the concept of sole ownership is simple, it may be complicated by the use of entities such as Partnerships, Joint Ventures, Limited Liability Companies (LLC), or other legal bodies that may own assets. If the asset is owned by an entity, the entity's governing documents may determine the division of the assets at the time of an owner's death.

It is critical at the time of purchase to properly title these assets.

Tenancy in Common

Tenancy in Common is a common type of ownership between two or more people. When property is owned by tenants in common, each person has undivided, but not necessarily equal, interest in the entire property. When an owner dies, their interest will pass through

the probate process. It is critical to note that owning property in this way, does not trigger automatic rights of survivorship.

Interest in the property can be transferred (sold, gifted, donated, etc.) to others, even non-tenants. Tenants can force the division of the property, without the consent of the other tenants, through a process called partition. Let's look at an example.

Jane and Joan are sisters who own 180 acres of farmland as tenants in common, each with 50% interest. Jane and Joan each own 50% of every acre. Jane and Joan rent the farm to Joan's only son Alex. Joan bequeaths Alex her share of this farmland in her will, while Jane bequeaths her share to her three non-farming children: Bill, Charlie, and Derek.

If Joan dies, Alex inherits her share of each acre. Jane would still have 50% ownership of each acre.

When both Joan and Jane have died, Alex would own 50% and Bill, Charlie, and Derek would each own 16.67%. Just because Alex has the larger share, does not mean that he has decision-making power or "majority". All four owners must agree to the management of the property regardless of the percentage of interest.

If Bill decides to sell his interest in the property, he can sell it to anyone. If Bill wants to sell to an outside party, he will likely have to force a partition, allowing the new owner to purchase a specific set of acres, rather than 16.67% of each acre.

In general, Tenancy in Common is not a desired way of ownership among farm and ranch families. Often, the first generation to own property this way can agree on

the management of the property. Over time, as relations become more distant and the percentage of interest dwindles, involuntary partition is more likely to be forced.

Joint Tenancy with Rights of Survivorship

Joint Tenancy with Rights of Survivorship allows two or more people to own property together. Unlike Tenancy in Common, when an owner dies the decedent's interest transfers to the other owners without having to go through the probate process.

Joint Tenants with Rights of Survivorship can sever their interest in the property, without the consent of the other owners.

Let's assume that Jane and Joan own their land as Joint Tenants with Rights of Survivorship. If Joan dies Jane would have 100% ownership of each acre regardless of Joan's will.

Partial Ownership

There are two types of partial ownership, life estate and term interest.

A **life estate** is a type of partial ownership that has two main parties, the life tenant and the owner, also called the "remainderman". A life tenant has rights to the income and/or use of the property for their life but has no disposition powers. Upon the life tenant's death, the remainderman, who owns the property, has the rights for income and use.

For example, Jon is the sole owner of 1,000 acres of grass in the Nebraska Sandhills. He titles the property as a Life Estate naming his wife Marie the life tenant and his son Andrew the remainderman. When Jon dies Andrew takes ownership of the property, but Marie will continue to live on, ranch, and/or receive the rental income from the property for the rest of her life. When Marie dies Andrew will gain use and income from the property.

Term interest is similar to a life estate. A tenant is provided a term of use (usually in years) for which they have the right to the income and use of the property. At the end of that term, the property is transferred to the remainderman.

Continuing the example from above, Jon can title the property with term interest naming his wife Marie the tenant for 5 years, and his son Andrew the remainderman. When Jon dies Andrew takes ownership of the property, but Marie will continue to live on, ranch, and/or receive the rental income from the property for the length of the term. At the end of the term, Andrew will gain use and income from the property.

Reviewing titles can be overwhelming. Work with a competent attorney who can explain the transfer of assets under multiple scenarios.

Jessica Groskopf

Associate Extension Educator
University of Nebraska – Lincoln
308-632-1247
jgroskopf2@unl.edu

J. David Aiken, Professor

Water & Agricultural Law Specialist
Department of Agricultural Economics
University of Nebraska-Lincoln
402-472-1848
daiken@unl.edu