ILLINOIS INHERITANCE LAWS

and

JOINT TENANCY

Some Points
for Illinois farmers

By N. G. P. KRAUSZ
and F. D. MARTI

CIRCULAR 747
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Cooperative Extension Work in Agriculture and Home Economics: University of Illinois, College of Agriculture, and the United States Department of Agriculture cooperating.

*Louis B. Howard, Director. Acts approved by Congress May 8 and June 30, 1914.*
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, and 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 and joint tenancy to distribute your property.

Illinois inheritance laws

Rights of dower

If an owner dies without leaving a will, the laws governing the descent of property operate as shown by the charts on pages 4 and 5. The surviving spouse (husband or wife) may choose to take dower, however, which entitles the widow or widower to a life interest in one-third of the real property of the deceased spouse.

If dower is chosen and there are children, the spouse receives the same amount of real and personal property as when no dower is chosen, except that the spouse takes a life interest in his or her share of the real property. This gives the children a remainder interest in the spouse’s property, and they (or if one of them has died, his children) receive it when the spouse dies.

If dower is chosen, a petition to that effect must be submitted to the Probate Court (the court that administers estates) within 10 months after an administrator of the estate has been appointed.

1 N.G.P. Krausz, Assistant Professor of Agricultural Law; F.D. Marti, graduate assistant in Agricultural Economics.

2 The chief distinction between real property and personal property is that real property is relatively immovable. The land and the improvements permanently attached to it—barns, fences, wells, tile lines, and similar features—are regarded as real property.
**DESCENT OF PROPERTY BY ILLINOIS LAW WHEN NO WILL IS LEFT**

<table>
<thead>
<tr>
<th>Surviving relatives</th>
<th>Personal property</th>
<th>Real property</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1. A wife or husband, and children</strong></td>
<td>2/3 to children</td>
<td>1/2 to wife or husband</td>
</tr>
<tr>
<td><strong>not electing dower</strong></td>
<td>2/3 to children</td>
<td>1/2 to wife or husband</td>
</tr>
</tbody>
</table>

| **2. A wife or husband, and parents, brothers, sisters, or their descendants, but no children** | All to wife or husband | All to parents, brothers, sisters, or descendants except for → 1/2 to wife or husband |
| **not electing dower** | All to wife or husband | 1/2 to parents, brothers, sisters, or descendants |

| **3. A wife or husband, but no children, parents, brothers, sisters, or their descendants** | All to wife or husband | All to collateral heirs except for → 1/2 to wife or husband for life |
| **not electing dower** | All to wife or husband | All to wife or husband |
## Inheritance Laws, Wills, and Joint Tenancy

### DESCENT OF PROPERTY BY ILLINOIS LAW

WHEN NO WILL IS LEFT (continued)

<table>
<thead>
<tr>
<th>Surviving relatives</th>
<th>Personal property</th>
<th>Real property</th>
</tr>
</thead>
<tbody>
<tr>
<td>4. Children, but no wife or husband</td>
<td>All to children equally&lt;sup&gt;4&lt;/sup&gt;</td>
<td>All to children equally&lt;sup&gt;4&lt;/sup&gt;</td>
</tr>
<tr>
<td>5. Only parents, brothers, sisters, or their descendants and collateral heirs</td>
<td>Parents, brothers, and sisters share equally&lt;sup&gt;5&lt;/sup&gt;</td>
<td>Parents, brothers, and sisters share equally&lt;sup&gt;5&lt;/sup&gt;</td>
</tr>
<tr>
<td>6. Only collateral heirs</td>
<td>Shared equally by nearest kindred of deceased</td>
<td>Shared equally by nearest kindred of deceased</td>
</tr>
<tr>
<td>7. No relatives</td>
<td>All to county in which the deceased resided</td>
<td>All to county in which the land is located</td>
</tr>
</tbody>
</table>

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1. **Dower** is the wife's or husband's life interest in one-third of the real property of the deceased.
2. Parents, brothers, and sisters get equal shares; descendants of deceased brother or sister get deceased's share. If one parent is deceased, the surviving parent gets a double share.
3. **Collateral heirs** are relatives such as grandparents, cousins, uncles, aunts, great uncles, and great aunts. They get equal shares if they are in the same and nearest degree of relationship to the deceased.
4. If one of the children has died, his children share his part.
5. Deceased parent's share goes to surviving parent; children of deceased brother or sister share deceased's part equally.
If a husband or wife intends to keep the property within the family, he or she may prefer a life interest (dower) for several reasons:

1. To prevent a double tax, once when the property is inherited by the spouse and again when the spouse dies.

2. To give the heirs a remainder interest in the property, thereby making it certain they will inherit the property.

3. To reduce probate costs at the time of transfer to those having remainder interests.

4. To prevent creditors of the deceased spouse from taking more than two-thirds of the real property.

If a will is left, the surviving spouse can elect dower only if the will is renounced. Usually a will is renounced only if less property is left to the surviving spouse than the laws of descent allow. A request for having the will renounced must be filed with the Probate Court within 10 months after the court admits the will.

**Homestead property**

A homestead is exempt from the laws of descent. The spouse and minor children are entitled to an interest of $1,000 in the family home. Creditors cannot force sale of the homestead for debts incurred by the deceased so long as the spouse lives on the homestead or so long as the youngest child is under 21 years of age and occupies the homestead.

**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 his relatives goes back to them upon his death.

**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.
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 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. You can, if you state it in your will, eliminate the need for your executor to provide for a surety on the bond. The bond is required to indemnify heirs for any loss sustained by them from mishandling of the estate. 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 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 the witnesses being present in the Probate Court, it is easier to prove when they are there.

1 For details concerning this point, see “Inheritance and gift taxes on Illinois farm property,” by N. G. P. Krausz, Illinois Extension Circular 728, which you can obtain from your farm adviser or from the College of Agriculture at Urbana.
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. In having your will drafted, 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. When you have revised 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.

5. Ask your attorney to prepare four copies of the will, one for himself, a second for your executor, a third that can be referred to at home, and a signed copy to be put away for safekeeping.

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 have the entire will rewritten and the changes incorporated into the context.

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 entirely.
Inheritance Laws, Wills, and Joint Tenancy

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

4. By marrying after a will has been made.

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). When a will fails to name an executor, or if no will has been made, the Probate Court appoints someone to do the work of the executor. This person is called an administrator.

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

1. The surviving spouse.
2. The children.
3. The father and mother.
4. The brothers and sisters.
5. The grandchildren.
6. The next of kin.
7. The public administrator.
8. 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.
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, those over $60,000 in value. 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. Again, 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 as tenants in common but as joint tenants.” 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).

To place 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 personal item such as a ring could be left to several children in joint tenancy by declaring such an intention in a will.

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 728, “Inheritance and gift taxes on Illinois farm property,” by N. G. P. Krausz.
Why should you make a will?

With a will your property will be distributed according to your wishes rather than by the laws of descent.

With a will you may decide who will settle your estate and eliminate the need for your executor to provide for a surety on the bond.

With a will estate planning is easier, and as a result there may be smaller state and federal death taxes on the property.

Who should prepare your will?

An attorney should draft your will and supervise the signing and witnessing of it because strict legal requirements have to be observed.

An attorney can also help you plan the distribution of your estate so that taxes and costs can be reduced.

What about joint tenancy as a substitute for a will?

Joint tenancy is effective the moment it is made; a will is more flexible since it takes effect only upon the death of the maker.

Joint tenancy allows the surviving joint tenant to have immediate control of the property, which usually reduces probate costs. A will requires a period of administration.

Joint tenancy offers serious disadvantages to owners of larger estates. There are also problems involved in disposing of property. Too, it is difficult to place all personal property in joint tenancy.

These and connected problems are discussed in this circular

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