

Southern Farm Management Extension Publication No. 5



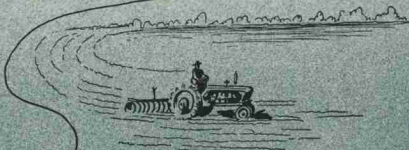
Inheritance

YOUR FARM
AND
FAMILY

DOCUMENTS

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FOREWORD

Your farm represents a valuable asset to you, your family, the community in which you live, and the state. You can promote the welfare of your family, community, and state by providing for an orderly transfer of your farm and other property at the time of your death.

You have the right to say how you wish your property distributed after your death, and you have the responsibility of providing for as orderly a transfer as possible. If you do not exercise this right, the laws of the state will provide a distribution for you. But the distribution made by the law may not conform to your wishes.

This bulletin deals with the inheritance of farm property, a subject of vital interest to all farmers and their families. It discusses such topics as (1) providing security for surviving wives and husbands, (2) equitable treatment of heirs, (3) preventing confusion and friction in the settlement of estates, and (4) preserving the value of the farm in the transfer between generations.

The bulletin is a result of the work of the Southern Farm Management Extension Committee. Responsibility for developing the publication was assigned to a subcommittee composed of M. C. Rochester of South Carolina, Chairman, Cecil Parker of Texas, Q. W. Lindsey of North Carolina, W. L. Gibson, Jr., of Virginia, and E. P. Callahan of the Federal Extension Service. In carrying out the assignment, the subcommittee had the benefit of many valuable suggestions from other members of the Committee.

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David S. Weaver, Administrative Advisor,
Southern Farm Management Extension Committee

SOUTHERN FARM MANAGEMENT EXTENSION PUBLICATION NO. 5

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THE NORTH CAROLINA AGRICULTURAL EXTENSION SERVICE

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INHERITANCE - YOUR FARM AND FAMILY

W. L. Gibson, Jr.,* and Harold H. Ellis**

John Doe was a successful farmer. Through thrift and hard work he acquired the ownership of a productive farm during his lifetime. His reputation as a leader in the community was unexcelled. His advice and counsel were often solicited. His farm was a demonstration of better-farming practices, and he was awarded a "Certificate of Master Farmer." Yet Mr. Doe died without arranging for a transfer of his property to his heirs. His failure to act resulted in the dispersal of his livestock and machinery through an auction sale, and his farm was almost idle for several years. What happened in the settlement of Mr. Doe's estate occurs frequently in southern agriculture. Approximately four out of every five farmers in the southern states have made no plans for the disposal of their property after death.

You may express your wishes for the distribution of your property after your death. This privilege is recognized in our property law through provisions permitting the preparation and execution of a **last will and testament**. In most states (Louisiana is an exception) there are only a few restrictions on what you can do with your property. If you fail to express your wishes, the laws of the state determine the way in which your property is distributed among your heirs. For convenience, we shall call these laws "the laws of descent."¹

Will the laws of descent transfer your property as you desire? If the law does not, you should have the necessary legal papers prepared to provide the distribution you want. Providing for the future ownership of your farm is as important as maintaining your soil fertility or improving the productivity of your livestock. A carefully prepared plan for settlement of your estate will contribute greatly to the future welfare of your widow, the well-being of your children, and the maintenance of the productivity of your farm. Few endeavors can give you and your family greater peace of mind.

This bulletin discusses objectives, methods, and problems in the inheritance of property and answers some of the questions which farmers frequently ask. **No attempt is made to provide you legal**

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¹ Real estate "descends" according to the law of the state in which it is situated. As a general rule, the personal property is "distributed" among the heirs according to the law of the state in which the deceased person was last domiciled, that is, his last place of permanent legal residence. The controlling laws in each state include statutes, constitutional provisions, and court decisions.

assistance. Rather, you are advised to consult a competent attorney for his counsel and for help in preparing any legal papers necessary for execution of your plans.

Louisiana readers should note that the laws of Louisiana and those of the other states differ considerably.² Frequent references are made to these differences throughout this report. This does not imply that the laws of the other southern states are all alike. They vary from state to state in several matters, but this short bulletin calls your attention to the more important variations only.

Objectives in Inheritance

The transfer of property between generations is not a task that can be arranged in a hastily prepared statement after a few moments of thought. Farm people, especially, need to give thought to the disposition of their property because their assets are invested in farm businesses which are difficult to divide in kind among several heirs without a loss of value. Do not let this difficulty discourage you from your responsibility to provide for transfer of your property after your death. The freedom we enjoy in the disposal of property in this country is based in part on our acceptance of this responsibility.

What to do? How to do it? When to act? These are questions that you can answer only after analyzing your individual situation. You and your wife should decide how you wish your property distributed. Of course, you will need legal counsel and perhaps counsel from others. But the final decision rests with you. The following objectives, expressed as goals for attainment, may help you in making your decisions.

1. Provide reasonable security for your surviving wife or husband until her or his death in order to assure comfort and care during old age. This is the main objective.

2. Provide equitable treatment for your children and other heirs. If one child has stayed on the farm with you during your old age, you may need to give special consideration to his or her ownership in the farm property and his or her contributions toward maintaining the farm or home. In such cases **equal** treatment of your children may not be **equitable** treatment.

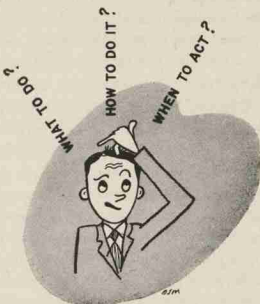
3. Provide an ownership of the property and choose a method, or methods, of transfer that will lessen the chance of friction, confusion, and uncertainty. Give special consideration to how the farm

² Louisiana laws are founded on the French civil law while the laws of the other southern states are founded on the English common law.

will be operated during the time required to settle your estate.

4. Provide an ownership of the property that will not lead to inefficient use of the land. Especially guard against undesirable subdivision of the land and long periods of operation under uncertain tenure arrangements.

No one expects you to achieve all these goals. But, if you take the necessary steps, you can accomplish the transfer of your farm to your heirs with fewer heartaches, less legal entanglement, lower costs, and less deterioration of farm resources.



Ways of Owning Property

Before you can determine how your property can or should be transferred, you need to consider what kinds of property you have and how much of each you own. There are two kinds of property: Real and personal.³ Real property consists of land and permanent improvements on the land such as buildings, fences, etc. Personal property includes livestock, farm machinery, household goods, and intangibles such as bank accounts, bonds, shares of stock, negotiable notes, and the like.⁴ This distinction is important in the transfer of property through inheritance. For example, in some states the laws of descent do not give the same proportion of the real and personal property to the surviving wife or husband.

There are a number of different ways of owning property. Some types of ownership provide a greater degree of control over the use or disposal of property than others. The way you own your property determines whether it becomes a part of your estate⁵ on your death. The following are some common ways of owning property.

The title to your farm may be in your name alone. This is **sole ownership**,⁶ and if the title is held in **fee simple**, you may use the farm about as you wish, or convey it to another person by some form

³ In Louisiana property is classed as movables and immovables rather than as personal and real property, but the distinctions between the two classes are in general the same.

⁴ Except that temporary structures and improvements or equipment attached to permanent buildings may sometimes be treated as a part of the real estate, depending upon the particular circumstances.

⁵ Called "succession" in Louisiana.

⁶ Except with respect to community property in Louisiana and Texas, discussed later.

of sale or gift. Or, you may, with certain limitations, control its disposal on your death by leaving a will.

If you hold a **life estate** in your farm, however, you have the right to use the farm during your lifetime but your right of disposal is restricted and the farm does not become a part of your estate. The person or persons holding the remainder interest in the farm, subject to your life estate, would acquire ownership of it at your death. (In Louisiana, a somewhat similar type of estate, called **usufruct**, is permitted.)

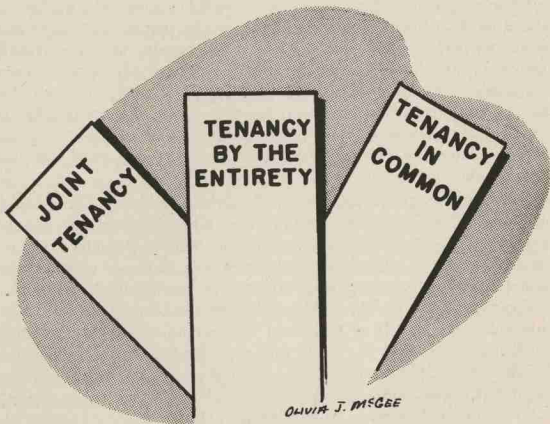
Co-ownership of your farm property exists when you and one or more persons hold title together. In some localities, a large proportion of the farms are owned by husband and wife. Other persons, either related or unrelated, may also own farm property as co-owners. Under such titles, you and your co-owners have no separate rights to any distinct portion of the land; rather, each of you has an undivided interest in the whole farm. Tenancy-in-common, joint tenancy, and tenancy-by-the-entirety are the usual ways whereby co-ownership exists, except in Texas and Louisiana, which are community property states.

Tenancy-in-common is one kind of ownership which may exist when you and one or more persons own an undivided interest in the farm. This would be the case, for example, if you and your brothers and sisters have inherited the farm. Each of you has an undivided fractional interest in the farm.⁷ Either can sell or devise (will) his share, and if either dies, his share becomes a part of his estate. This method of co-ownership is permitted in all southern states except Louisiana where, however, a similar type of co-ownership, called **ownership in indivision**, is permitted.

Joint tenancy exists where a farm is owned jointly by you and one or more persons with survivorship rights. You and your co-owners are called "joint tenants." When one joint tenant dies his undivided interest, instead of going to his heirs as it would if he were a tenant-in-common, is distributed equally among the other joint tenants. Thus, if a farm is owned by you and your wife as joint tenants, and you die, your wife takes ownership of the entire farm. Although you could sell your interest before your death,⁸ you cannot control its disposition by a will. Joint tenancy may exist between husband and wife, persons of other relations or entirely unrelated

⁷ The interests are equal unless otherwise specified.

⁸ In some cases, however, your wife may have to sign the deed to release homestead rights. Selling your interest would destroy the joint tenancy. Your wife and the buyer of your share would become tenants-in-common, without survivorship rights. (It would seem, however, that if a deed creates a **life estate** in two persons, with the survivor to take the remainder in **fee simple** on the death of either, neither could destroy the other's survivorship rights.)



persons. All shares in property held in joint tenancy must be equal.

In most states, however, the deed or will creating a joint tenancy must specifically state that survivorship is intended, or, for all practical purposes, a tenancy-in-common will result. Joint tenancy is not recognized in Louisiana and perhaps not in Georgia, Tennessee, or South Carolina. It may not ordinarily be possible to create survivorship rights at all in Louisiana and South Carolina. But in Georgia and Tennessee survivorship rights may be created at least by express contract, and in Tennessee survivorship rights may be expressly provided for in a deed which otherwise creates a tenancy-in-common.

Tenancy-by-the-entirety is a type of co-ownership between husband and wife which is similar to joint tenancy. The main difference between it and a joint tenancy, as described above, is that neither you nor your wife, without the other's consent, can break this kind of arrangement once it is established. If either you or your wife dies, the survivor has the full ownership of the farm. Tenancy-by-the-entirety is not permitted in Alabama, Georgia, Louisiana, Texas, and possibly not in South Carolina.

Co-ownership may also exist in **personal property**. Your bank accounts, both checking and savings, may be held as single accounts or as joint accounts. And in most states the right of survivorship

may be provided for so that on one's death the survivor becomes entitled to the whole account. Likewise, stocks, bonds, and other personal property may be held in joint ownership, with or without rights of survivorship. Whether or not rights of survivorship exist is an important factor for consideration in planning for the distribution of property after death. (It may not ordinarily be possible to create survivorship rights in bank accounts or other personal property in Louisiana and South Carolina, except perhaps for United States bonds.)

Community property exists in Texas and Louisiana.⁹ In general, community property laws provide that whatever real or personal property is acquired by either you or your wife during the existence of the marital relation—other than by gift, descent, or devise to either alone—becomes part of a common fund, called community property.¹⁰ There are, however, a number of exceptions to this general rule, particularly in Louisiana. For example, property acquired by either spouse with his or her own separate funds usually does not become community property. The ownership of community property is joint (in equal undivided shares) even though title to the property is in either the husband's or wife's name. On the death of either, his share of the community property becomes a part of his estate.

Transfer of Property

There is no one best way of providing for the transfer of farm property between generations. A procedure that works well for one person may fail completely for another. Thus, you should select a method of transfer to fit the particular circumstances in your family. A brief discussion of several important ways of transferring property between generations follows. These include inheritance without a will, wills (including testamentary trusts), and different ways of transferring property before death by some form of sale or gift. In addition, the transfer of farm property may sometimes be facilitated by incorporating the farm business.

INHERITANCE WITHOUT A WILL

If you die without leaving a valid will, your estate, including both real and personal property, is distributed among your heirs-at-law in accordance with the state laws of descent. The laws designate

⁹ Also, some property may still be held as community property in Oklahoma as the result of a law in effect there from 1945 to 1949. But community property rights must have been recorded or filed for court determination by June 1952 to be claimed after that date.

¹⁰ In Louisiana, though not in Texas, the husband and wife may by agreement before marriage prevent community property laws from applying to all property which either or both acquire after and during their married life.

the persons to whom ownership of the property is transferred, and the fractional share which each person acquires.

THE LAWS OF DESCENT. The laws of descent vary from state to state. In general the state statutes provide: (1) That a certain share of the property shall be distributed to your surviving wife (husband), if any, and (2) that the remaining share shall be distributed to your other heirs after debts against the estate, costs of administration and the like are paid out of the estate. (Usually real property is not used for this purpose until after the personal property is exhausted.)

The laws of descent establish a system of priority for the distribution of that part of your estate remaining after your surviving wife's (husband's) share is set aside. If your wife (husband) does not survive you, the system of priority governs the distribution after debts, etc., are paid. First, the property passes to your children, each child receiving an equal share.¹¹ The children of a deceased son or daughter, your grandchildren, usually receive the share to which their parents would be entitled if alive. Second, when no descendants (children, grandchildren, etc.) survive you, either or both of your parents or your brothers and sisters receive the property. In several states brothers and sisters inherit only when neither parent is alive, while in other states they share in the estate along with one or both parents. In many southern states, persons other than the surviving spouse take the same share in both real and personal property.

In all states except Louisiana, Mississippi, Oklahoma, and Texas, your widow would be normally entitled to **dower** in the real estate.¹² Dower rights generally entitle her to a **life estate** in one-third of the real estate, value considered. Some state laws, however, may provide her with a greater interest in the real estate, for example a fractional share in fee simple, and in all states she is entitled to a specified share of the personal property.¹³

Except in Arkansas where all such provisions for the widow are called "dower," the widow's share of the personal property is commonly called her "intestate share." In some states her share of the real estate may also be called this, rather than dower. In Georgia and South Carolina she may elect to take either dower or an intestate share of the real estate, and in Florida she has such a choice with respect to both real and personal property. While the widow's dower

¹¹ Except where a child is given property by you before your death as an **advancement** against such child's share of your estate. In Louisiana certain types of gifts will be presumed to have been so made until proven otherwise.

¹² Dower rights occasionally may be barred with the wife's consent—for example, by a settlement at the time of marriage.

¹³ In a few states, notably Alabama, the widow's share of the estate may be reduced if she has separate property of her own.

often may not provide her with as great an interest in estate property as her intestate share, it usually has priority over most creditors' and other claims against the estate; so it may be particularly useful to her if there are large debts to pay.

Your wife's interest in your estate, particularly her "intestate" share, depends upon the class of heirs who survive you. If you are not survived by children nor descendants of any deceased children, your wife's interest is usually somewhat greater than when there are such heirs. In some states she would take the entire property in such cases.

The husband (widower) of a deceased woman is in some states entitled to an "intestate share" of the real estate, while in others he is given rights somewhat similar to dower, usually called **curtesy rights**. Curtesy rights generally provide the husband with a life estate in **all** of the real estate (though in a third of it in Virginia). But in some states the husband acquires curtesy rights only if children have been born of the marriage. In most states he acquires about the same share of the personal property as the widow.

Other special rights of the surviving widow in the deceased's property (in most states these rights are not available to a surviving husband) may include **homestead rights**. They may also include the right to specified articles of personal property, and to a living allowance to be paid out of the estate. The living allowance is often limited to a year's support.¹⁴ Such special provisions, particularly the right to the family homestead, generally are made for the benefit of the widow and any minor children. Part or all of these rights normally are given priority over the rights of most creditors, and in some states they serve to increase the widow's share of the estate, whether there are creditors or not.

In some states a widow may claim her **homestead rights** only in place of her dower or intestate share. In others she may claim her homestead rights in addition to such provisions. Homestead rights usually provide her with no more than the life use of the homestead (plus certain additional land in most states) and in some states her homestead rights in such property may be lost by her failure to occupy or use it, or by her remarriage.¹⁵ In a few states, however, such rights may sometimes provide her with complete ownership of a substantial acreage.

¹⁴ Special rights of a widow in Louisiana include: (1) homestead rights, (2) "usufruct in necessitous circumstances," and (3) provisions for a widow who has brought dowry (separate property) to the marriage. Moreover, a widow or husband may sometimes be entitled to claim the marital portion which is provided for a surviving spouse in "necessitous circumstances."

¹⁵ In some states the widow cannot claim homestead rights in farm land at all if the owner and his family had moved off the farm before his death.

In the community property states of Texas and Louisiana a married person's share of **community property** becomes a part of his (her) estate along with his (her) separate property. The surviving spouse retains his or her share of the community property. If there are children or descendants of deceased children they inherit the deceased's share of the community property, subject however to certain rights of the surviving spouse. In Louisiana the surviving spouse acquires a **usufruct** in the share taken by the married couple's children, grandchildren, etc. In general, this right entitles the spouse to the use for life, or until remarriage, of their share of the community property.

SOME POINTS TO CONSIDER. State laws of descent provide a definite method for the determination and transfer of ownership of property left by people who fail to make provisions for the distribution of their property. But there may be a number of disadvantages. For example, the share provided for the surviving wife sometimes is inadequate for her support. To correct this situation, the heirs often postpone the final settlement of the estate until the death of the surviving wife. However, uncertainty as to the final settlement frequently causes the farm to be operated in a way that rapidly reduces its productivity.

Allowing the laws of descent to transfer farm property may lead to other inequities which give rise to considerable family discord. This is true, for example, when one child has remained at home during the old age of the parents and assisted them a great deal in maintaining the farm or home. Although similar difficulties may arise under other methods, they are more probable under the laws of descent because of the lack of any document which specifically spells out the intentions of the deceased.

In families where there are no children, the husband may want his wife to receive all his property on his death. Under the laws of descent in a number of states, his parents or his brothers and sisters may receive an interest in the property he wanted his wife to have.

Other disadvantages in permitting the laws of descent to govern the disposal of farm property are: (1) The estate may remain unsettled, or undivided ownership interests may not be reconsolidated for some time. This tends to create uncertainty or other difficulties in operating the farm and in other matters. (2) A physical division of the farm with a loss of a part of its value may occur. (3) The owner of the property has no means of designating whom he wishes to administer his estate. (4) There is no way of making special bequests to churches, charities, etc., if desired.



This does not necessarily mean that you should not leave your property to be distributed according to the laws of descent. Rather, it means that this method, if used, should be your deliberate choice.

WILLS

A will is a document in which you direct the disposal of your property upon your death. Other than settlement under the laws of descent, a will is the most frequent method used in disposing of prop-

erty after death. In 1946, only 12 percent of the farm owners in the South had prepared wills directing the disposal of their farm and other property.

You may wish to have your property distributed in a way that differs from that prescribed by the laws of descent. You can accomplish this through the preparation of a will subject, however, to certain restrictions. The will provides a legal means for adapting the transfer of your property to your family situation. For example, if you have only a small estate and your children are already educated and established in their own homes, you may want your wife to have all or most of your property in fee simple or under a life estate in event she survives you. You can provide this in a simple and short will, except in Louisiana. There you could not prevent your children from inheriting a certain portion of your estate except for specified causes.¹⁶ Or, if during your lifetime you have helped some of your children more than others, you may wish to compensate for this in the settlement of your estate. A will which provides varying proportions of your estate to the children or leaves specific items of property to each child will accomplish your desire (although there are limitations of your ability to do this in Louisiana, as is discussed later).

These individual family situations, which are present in some form in almost every family, are the most common reasons for preparing a will. Nevertheless, it is important to remember that simply making a will does not necessarily provide a more satisfactory trans-

¹⁶ Examples of causes making so-called "disinherison" of a child by a parent permissible are: (1) refusing sustenance to a parent when able to afford it, and (2) marriage of a minor child without parent's consent. The reason for disinherison must be stated in the parent's will and the facts stated must be proved by the other heirs.

fer of farm property. This depends largely upon the contents of the will.

As has been noted, your right to dispose of your property by will is not unlimited. There are special restrictions imposed for the protection of your widow, such as her right to dower,¹⁷ and usually there are other restrictions, which vary from state to state. They may include homestead rights and certain other exemptions and allowances—usually provided for the benefit of the widow and minor or other children.¹⁸ In some states the widow or widower cannot be deprived by the will of more than a specified share of the estate. In some cases the will must be renounced by the widow in order for her to claim the benefit of such restrictions, while in other cases this may not be necessary. Moreover, if there are survivorship rights in property owned jointly with your wife or another—as joint tenants, for example—such rights ordinarily cannot be defeated by will.¹⁹

A discussion of the transfer of property between generations often brings forth the statement, "I should have prepared a will before now, but I just haven't gotten around to it." Most people postpone the making of a will because of several mistaken beliefs.

First, many people erroneously think that wills are necessarily long documents written in complicated phraseology which are extremely difficult to prepare. Nothing could be further from the truth. Simple wills, but not necessarily short ones, are the best.²⁰

Second, some people consider the preparation of a will a job to do after they are 65 years old. Yet a young farmer, heavily in debt and with minor children, should be greatly concerned about giving every possible aid to his wife in event of his death. A young widow faces difficult and trying times if she must rear her children with only minor control over the farm on which she depends for income. Such conditions can be greatly eased by preparing a will in which the wife is given full control of the farm at least until the children are of age. (There are limitations on your ability to do this in Louisiana, how-

¹⁷ In some states the widower's curtesy rights, if any, can be defeated by his wife's will.

¹⁸ Although part or all of such rights may be defeated by a will in some states, notably South Carolina, in Louisiana the children cannot be deprived of their protected share except for specific causes, such as failure to support an elderly parent when able to do so. The children are even protected against certain gifts of property made to other persons before the parent's death. The so-called *legitime* to which they are entitled includes their protected share of the parent's estate plus any such gifts made before death. Their *legitime* varies with the number of children—from $1/3$ to $2/3$, after debts have been deducted from the value of the estate. Descendants of any deceased child become entitled to his protected share. It should be noted, however, that their inherited share of any *community property* would be subject to the usufruct (use for life or until remarriage) of the surviving spouse. Moreover, any one child's protected share of the estate may in some cases be reduced or nullified if he has already received considerable property by gift from the deceased parent.

¹⁹ In a few states there are also limitations on the extent to which the estate may be left to charity to the exclusion of your wife or children. And the law in all states places a limitation upon the maximum period for which a person may determine the future ownership of his property.

²⁰ A warning must be issued here against the use of printed will forms. Their use has resulted in many court suits to determine the intentions of the testator (person making the will).

ever, because of the children's legally protected share of the estate.) Later, if early death does not occur, a new will can be prepared to revoke the earlier one and to make other provisions for the settlement of the estate.

Third, some people believe that wills are necessary only if they have considerable wealth. Any property owner has a right to say how he wishes it distributed after death. It is not so much the value of your estate but what you do with it.

State statutes set forth the rules governing the preparation of a will. They differ somewhat from state to state. Usually a will must be made in writing²¹ by a person who is mentally competent. A will must be signed, and it must be witnessed²² by a specified number of competent persons. The number of witnesses is two in all states except Georgia and South Carolina where three are required and in Louisiana where from two to seven are needed depending on the circumstances. A person who has been named a beneficiary under the will should not be a witness to the will. Usually the witnesses need not know the contents of the will.²³

The provisions stated in your will do not take effect until your death. You may revoke or change your will at any time before your death. A new will, which expressly revokes a previous will nullifies the earlier will, or if the new will changes the disposition of the property the earlier will may be revoked in whole or in part. It is not necessary to prepare an entirely new will if only a few simple changes are needed. Such changes may be made by preparing a codicil²⁴ to the present will. Corrections should not be made by erasures, insertions, or cross-outs. Both revocation and the making of a codicil provide a means of keeping your plan for settlement of your estate up-to-date. Since family situations change constantly, you should review your will whenever significant changes in family circumstances occur.

The following "Steps to Take in Making a Will" are taken from

²¹ Most southern states (though not Louisiana) permit oral wills under prescribed circumstances, either as "death-bed" wills or for persons in military service, or both. But in many states such wills can be used only to dispose of personal property, or property of limited value. Oral death-bed wills, in particular, must generally be reduced to writing or probated within a certain time, or both, to be effective. Other legal requirements, such as the number or type of witnesses, must also be strictly complied with to make oral wills effective.

²² Many southern states (though not Alabama, Florida, Georgia, and South Carolina) permit holographic wills. These are wills written in the maker's own handwriting, and they do not require witnesses.

²³ Except that in Louisiana in using a type of will which appears designed for use mainly by persons who cannot read, the will must be read in the presence of three to seven witnesses, depending on the circumstances.

²⁴ A codicil is a separate addition to a will, made subsequent to the execution of the will, which adds to, takes from, or otherwise changes the will. To operate as a codicil, the addition must be executed, signed, witnessed, etc., in the same manner as a will. It is permissible to have more than one codicil.

a recent publication of the University of Wisconsin.²⁵ They are important enough to repeat here:

1. Make a record of all property owned. Get together real estate deeds, mortgages, stocks, bonds, bank books, etc., so that you can check with your attorney whether they are owned solely or jointly.

2. Check beneficiary clauses of life insurance policies or have your attorney do so.

3. Make up your mind how you want your property distributed and then go to your attorney and talk the whole thing over with him. Consider his advice carefully.

4. If your problems are complicated, it is well to ask your lawyer to prepare a rough draft of the will. You may want to take some time to study it and think it over.

5. When satisfied that the document expresses your intention, go to your attorney's office and have him supervise the signing. He will see to it that the proper steps are taken in the right way.

6. Leave the will in a safe place after you have signed it, either with your attorney, or in your safe deposit box. [In some states the will may be filed with certain county officials.²⁶] If you leave it in any of these places, you are entitled to have it back any time you want it.

7. Look over your will whenever there is an important change in your family; a death, a marriage, a birth, a crippling accident, or a change in the general economic situation, etc. Remember you are free to change your will at any time, but do it correctly.

TESTAMENTARY TRUSTS

A trust is the holding by a person or corporation, called the trustee, of real and personal property for the benefit of another person, called the beneficiary. You may arrange for a testamentary trust by preparing a will in which you designate that certain property be passed to a trustee to be managed and distributed in accordance with your directions expressed in the will. Such a trust becomes effective after your death.

Under some circumstances a testamentary trust has certain advantages over an outright disposition of property to the heirs. If you are responsible for the support of small children, a mentally deficient child, or aged parents you may find it desirable to have a will creating a trust for the benefit of these dependents in case of your death. Or, you may want your wife to have the income from your farm during her lifetime. However, realizing that she would be

²⁵ Reprinted with permission from J. H. Beuscher and Louise A. Young, **Your Property—Plan Its Transfer**, Wisconsin Agricultural Extension Service Circular 407, Madison, December 1951.

²⁶ For example, in Arkansas with County Clerk of Court of Probates, in North Carolina with Clerk of Superior Court in each county, in Oklahoma in office of County Judge.

unable to manage the farm for full production and that there is no other member of the family to manage it for her, you may desire a trust arrangement.²⁷ Many banks have trust departments which specialize in this service. A number of banks have farm credit departments where men trained in farming are employed. These men assist the trust departments in managing farm property held in trust.

A person should never make an arrangement for a testamentary trust without the advice of both an experienced lawyer and an experienced trustee. There are many pitfalls to be avoided.

TRANSFER BEFORE DEATH

Under some circumstances it may be desirable to transfer a part of your property to one or more heirs before your death. This is especially true if you have reached a retirement age and wish to turn over the responsibility of operating your farm business to a son or another heir. Such transfers may be accomplished through sale, gift, or a combination of the two. The chief advantages of before-death transfers are: (1) They permit the heir to acquire ownership at an earlier age, and (2) they provide a method of offsetting a decline in the productivity of the farm which so often occurs during operation by an elderly farmer.

Usually transfers of property before death are made by direct sale. If you sell a full interest in the farm you may reserve a life estate in the property for yourself and for your wife. This gives you control over the use of the farm and the income derived therefrom until your death. You may operate the farm, rent it to a tenant farmer, or farm it under a partnership with a son, son-in-law, or another person.

If the transfer of a full interest in the farm seems undesirable, you can sell a fractional undivided interest. In this case, a deed is prepared conveying a one-fourth, one-half, or any other fractional interest desired, as a tenant-in-common (called "in indivision" in Louisiana). The ownership of the remaining undivided interest is retained. In this situation, neither you nor your co-owner has the exclusive right to operate the farm while both are alive except as mutually agreed upon. And each of you would have the right to sell your undivided share or to require partition proceedings in which the interests might be set aside in kind or, if sold, as your individual shares of the sale value. However, if you reserve a life estate in the

²⁷ Such trust arrangements are recognized in Louisiana only to a limited extent. They cannot alter the legally protected share of the children discussed on page 12. However, a child's share may be placed in trust for him for any period not to exceed 10 years, or 10 years after he becomes of age, (although any income from the property held in trust must be paid over to him at least once a year).

undivided interest sold (this cannot be done in Louisiana) you would retain use of the entire property until your death.

In several states, a joint tenancy with rights of survivorship as described on page 6 could be created. For example, you may wish to transfer a fractional undivided interest to a son under joint tenancy with rights of survivorship. Under this arrangement the son would get the entire property if you died first, but you would get the entire property to the exclusion of the son's family if your son happened to die first.

Farm personal property is sold before death more frequently than real property. Some farmers retire in their old age, selling their livestock and equipment, and renting the farm as a source of retirement income. In recent years, a common practice has been to sell a part of the personal property to a son or a son-in-law who is farming under a father-son partnership agreement.

Sale of property before death does not necessarily mean that you have provided for a distribution of your estate after death. Any cash you received, if still held at the time of your death, is property for distribution. The same is true for property, such as bonds, stocks, etc., bought with the cash received, or any notes, mortgages, or deeds of trust held as a result of the sale of the property. And, where undivided interests are conveyed, the remaining undivided interest, if held as tenants-in-common, becomes a part of your estate. Accordingly, you should prepare a will designating how you wish such property distributed at death.

Farm property is seldom disposed of through outright gifts because most farmers are financially unable to live upon their nonfarm assets. When a deed of gift is made, the deed often provides for the reservation of a life estate to the parent or parents (except in Louisiana, where this is not permitted). The disadvantage of such transactions is that the parents usually are unable to use the farm as security for a loan in event money is needed.

In any event, a thorough investigation of all tax liabilities involved should be made before any sale or gift of property, real or personal, is agreed upon.

In Louisiana, gifts of certain property, including farm real estate, to one child ordinarily cannot deprive the other children of their legally protected share, discussed on page 12. Moreover, such gifts will be presumed to be made as an advancement against the child's share of such part of the parent's estate as exceeds the children's protected share unless the parent has expressly provided otherwise. These principles also apply to partial or indirect gifts.

such as the sale of farm real estate to a son at a very low price.

INCORPORATION OF FARM BUSINESS

In recent years some farmers have considered organizing a family corporation because they want their businesses maintained intact after their death.²⁸ Generally, these are highly specialized businesses, where considerable financial advantage is involved in maintaining herds of purebred livestock, strains of hybrid seed, special market outlets, etc. The idea is to establish a business organization which will outlive its present owner or owners, and which permits division of ownership among heirs without physical division of the farm property.

When a corporation is formed, shares of stock are issued as evidence of ownership. Each stockholder's interest in the business is determined by the amount of stock he owns. Shares of stock may be bought or sold or may be transferred by descent or by will to the heirs of a deceased stockholder without necessarily disrupting the corporation. Thus, if you incorporate your business and deed the farm to the corporation you may transfer the ownership of your share of the business to your heirs by designating in a will the distribution of the shares of stock which you desire. In this way division of the farm in kind can be avoided, unless the heirs decide to dissolve the corporation, and the farm is divided in the process.

State law governs the organization and operation of a corporation. A charter must be secured, officers and a board of directors must be appointed, and stock must be issued. In several states annual meetings of stockholders must be held and annual reports on the business filed. All this requires considerable "paper work," which usually must be done by an attorney or an accountant. Filing fees, annual franchise or license taxes and other costs are incurred sometimes. In addition, on small to average size farm businesses, the tax liability on the income derived from a farm business may be greater if organized as a corporation. Both Federal and state income taxes must be considered in most southern states.

The relatively small size of most farm businesses, the extra expense, time, and trouble involved in the organization and operation of a farm corporation, and the possibility of additional taxation are perhaps the main reasons why there are so few farm corporations. In any event, the pros and cons of incorporating should be talked

²⁸ Other reasons for incorporating farm businesses may include (1) to reduce the liability of the owner or owners, in case of business failure, to the extent of the investment in the business, (2) to facilitate the obtaining of additional capital, and (3) to enable the farm operator or operators to participate in the Federal social security program. But these reasons sometimes may not turn out to be so advantageous as they might first appear.

over with a competent lawyer before attempting it.

Situations for Special Consideration

"How should my property be distributed among my heirs?" is a hard question for you to answer even with the best of counsel. "Knotty" problems arise in the effort to divide a farm business among several heirs without destroying a part of the value of the property. A discussion of several problems which frequently arise in the transfer of farm property between generations follows. This discussion is presented with the hope that it will help you make a better arrangement for the transfer of your property at your death.

SECURITY FOR SURVIVING WIFE²⁰

The chief consideration in preparing for the distribution of your property after death is to provide for the security, comfort, and happiness of your wife. Her life expectancy is approximately five years longer than yours, and she probably married at an earlier age. Thus, there is a good probability that she will survive you by several years. Her care, comfort, and happiness during these widowed years will depend greatly upon her interest in your estate and the life insurance benefits she receives at your death.

Under the laws of descent, your wife has certain rights in the real and personal property you own. In most states a number of these rights are of first priority and cannot be denied to her. However, they sometimes fail to provide adequately for her, especially if your estate is small, you had little life insurance, and if long periods of illness involving expensive medical care accompanied your death.

Often an elderly widow, incapable of self-support, must share a small estate with adult, self-supporting children. Within a short time, the widow may be left dependent on the kindness and consideration of the children. This is not a satisfactory arrangement even under the best of circumstances.

Some farmers realize the possibility that unfavorable circumstances may result from settlements under the laws of descent. Accordingly, they have taken



²⁰ The discussion is in terms of the wife surviving, but a large part of it applies equally well when the husband survives and the wife had ownership in the property.

steps to provide a larger share of their estates for their wives (although in Louisiana the children cannot be deprived of a specified share of the estate, as discussed on page 12). Most frequently these arrangements have been to prepare a will in which the wife is given a lifetime interest in the whole farm. Under such an arrangement the widow receives the annual income from the farm and the farm home is for her occupancy during her lifetime. However, the larger interest provided for the widow does not assure an annual income from the farm. Many wives become widows after the age of 60, and often they are physically unable and do not have the technical knowledge to operate a farm efficiently. This may mean that the annual income derived from the farm is extremely small. It may also mean that the farm will decline rapidly in productivity, becoming less valuable each year it is operated under such circumstances.

But, if the farm can be rented under a satisfactory leasing arrangement, or if there is a son who can operate the farm, a life interest in the whole farm offers a means of providing an annual income for your wife. Care should be taken, however, to assure that she well knows the leasing provisions required for establishing a satisfactory landlord-tenant relationship. Or, if a son is to manage the farm under an agreement with his mother after your death, steps should be taken to protect him against loss of his interest in the property at the death of his mother.

Farmers frequently ask about the possibility of changing the title to their farm property to make their wives co-owners with rights of survivorship, either under joint tenancy or tenancy-by-the-entirety as described on pages 6 & 7. Under such arrangements (which are permitted in most states if properly drawn up), when one of the co-owners dies the other takes full ownership of the property. This arrangement differs from the "life-interest in all the farm property" discussed above, in that the wife, in the event of the husband's death, would take full ownership with the right of disposal of the property. Whatever transfer is made at her death would depend upon (1) whether she still owned the farm, and (2) the distribution she provided in a will, or if no will is left, the disposal under the laws of descent to her heirs. Thus, although a joint tenancy or tenancy-by-the-entirety provides for the disposal of farm property to a surviving wife, it does not transfer the property to the next generation unless she arranges for it. Moreover, a careful check should be made of the taxation involved, including the gift tax, the income tax, the federal estate tax, and state inheritance or estate tax, for there may sometimes be important tax disadvantages in such joint holdings.

Realization of the inability of elderly widows to operate farm businesses occasionally causes a farmer to direct the executor of his estate to sell his farm and all the farm personal property. In a subsequent clause of his will, he directs that his wife, if she survives, be paid all or a specific proportion of the returns from the sale. Sometimes, it is provided that a member of the family be permitted to buy the property at a stated price. In other cases the property is sold outside the family to the highest bidder. One objection frequently raised to selling the property is that it may uproot the widow from her home, especially if the farm is sold outside the family. Although other circumstances frequently make it necessary for widows to live with their children, this does pose something of a problem. If a member of the family is to buy the farm, consideration might be given to providing that the sale is subject to the right of the widow to have the dwelling as her home for the remainder of her lifetime.

The number of widows who know practically nothing about their deceased husband's financial and business affairs is surprising. Yet, on becoming widows, they are immediately faced with the making of decisions in which a knowledge of such matters is necessary. It is important that your wife know :

1. Where your valuable papers are kept, especially any will, deeds, mineral leases, easements, insurance policies, and social security papers.

2. Where and what inventories and records of the income and expenses for the farm business are kept.

3. What special farm contracts are in effect, for example, marketing agreements, memberships in cooperative associations, and milk-hauling contracts.

4. Where and what records of the income from outside employment and investments are kept.

5. What mortgages, notes, etc., are outstanding, who holds them, and when they are due.

6. What checking and savings accounts are kept.

7. What stocks, bonds, notes, etc., you own, where they are kept, and what broker you usually consult.

8. What persons you usually consult on business, legal, farm, and personal matters.

9. What real estate you own, what rents are received from each property, and where the written leases, if any, are kept.

10. What provisions exist under any retirement plans other than social security.

A knowledge of these matters will add a great deal to the comfort of your wife during the first trying months of widowhood. It will also greatly facilitate the ease of handling your estate by your administrator or executor.

SUBDIVISION OF FARM PROPERTY

Many years are required to build a farm into a highly productive and efficient business. It is not unusual for an individual farmer to spend the greater part of his life acquiring a productive farm. Yet, unless proper steps are taken to prevent it, the benefits of his achievement may sometimes be destroyed at his death through the division of the farm among his several heirs.

Most farmers keep the majority of their assets invested in their farm businesses. Thus, a farmer's estate will consist largely of a farm and farm personal property such as livestock and machinery. Like other Americans, most farmers want their children to share equally in their estates. But it is hard to divide the physical property (real and personal) among several children without destroying the farm as an established business. If the acreage is divided, the resulting tracts often are too small for efficient farms. On some tracts the buildings are inadequate for operation as an individual unit, while on the tract which includes the farmstead, the buildings have excess capacity. Likewise, division of the personal property reduces the livestock herd below the size necessary for efficient management, and leaves the units with only a part of the necessary equipment for

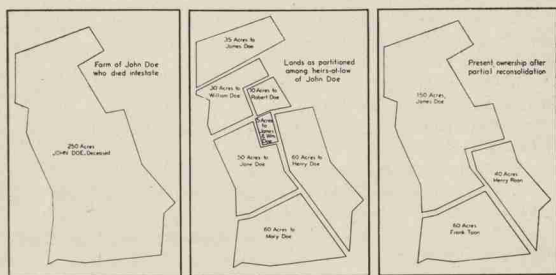


Figure 1.—John Doe, owner of a 250-acre farm, died intestate. His heirs-at-law partitioned the land into seven tracts. Over a period of 16 years one son was able to reconsolidate 150 of the 250 acres. In 1953 these 250 acres were in two ownership units and a part of a third.

continued operation. Furthermore, valuable crop rotations are broken, the proportion of cropland to pasture land becomes unbalanced, the size of fields is reduced, roads, lanes, etc., must be relocated and rebuilt, and established markets may be lost.

An example of what happened to the real property in an actual case is shown in Figure 1. The farmer died without a will, leaving a good farm of 250 acres. A year after his death, the 250-acre farm was partitioned into seven separate tracts; one tract was deeded to each of the six heirs and a tract of five acres was given jointly to two of the heirs. The size of these ownership tracts ranged from five to sixty acres. Over a period of 16 years one son was able to buy all of the ownership tracts except one of 60 acres and 40 acres of another. The first reconsolidation took place three years after partitioning when this son bought one tract of 35 acres which, added to the tract inherited, gave him a farm of 65 acres. No further reconsolidation took place until the 12th year after partitioning. In the process of accumulating 150 of the 250 acres in the estate six deeds were drawn and recorded.

It is not always undesirable to subdivide farm property for inheritance purposes. Some farms are large enough to permit a division of acreage into several farms of economic size. Others are already too small, and subdivision may result in some tracts being consolidated with other farms in the community.

However, if it appears desirable to keep your farm intact, consideration should be given to transferring the farm to one heir, and making other provisions for the other heirs. If you own considerable nonfarm property, you might leave the farm to one child, and provide equal inheritance for the other children from your nonfarm property. If insufficient nonfarm property is owned to do this, you can prepare a will leaving the farm to one child on condition that this child pay the other heirs a stipulated sum of money as their share in the estate. Or, the will may achieve substantially the same result by giving one child an option to buy the farm at a specified price with the money from the sale to be divided equally among all the children. If the value of the farm changes materially after the will is prepared, you should adjust the payments specified by adding a codicil. It may also be desirable to designate the terms of payment. Such practices are usually followed when one child wishes to farm and the others either are already established on farms of their own or do not wish to make farming their life work.

In Louisiana, however, such provisions for one child could not defeat the legally protected shares of the others, discussed on page

12. It would help, from this standpoint, to avoid imposing any definite terms of payment. Also it would seem best to provide in the will that the actual value of the farm at the time of death be used, rather than to attempt to set a price in advance. This may sometimes be desirable, in any event.

EQUITABLE INHERITANCE

The laws of descent provide for equal distribution of property among children. Equal inheritance, although desirable in principle, often does not provide what parents consider as equitable treatment of the children. Such circumstances arise in farm families most frequently when one child has remained at home and farmed with his or her parents during their aging years. This child may not only contribute to the welfare of the parents but may also contribute a great deal to the maintenance of the productivity of the farm through his labor, management, and in some cases the expenditure of a part of his income. Other situations in which parents may desire an unequal distribution of their property are: (1) When one child was given an expensive education while the others were not, (2) when one or more children received considerable financial aid in getting established in their life work or in acquiring their own home and the other children did not receive an equal assistance, (3) when one child contributed financial assistance to the parents, and (4) when one child has some physical or mental handicap.

In situations like these, you can accomplish the distribution you desire by preparing a will in which you specifically state your wishes with respect to each child. Otherwise, your estate will be settled under the laws of descent which provide equal distribution of the property among the children rather than what you may have considered equitable. (In Louisiana, however, each child generally is entitled to a specified share of the estate regardless of the will, discussed on page 12. This legally protected share of the estate may be reduced or nullified if he has received considerable property by gift from you, but it will not be reduced because of funds expended for his education or certain other types of gifts.)

DECLINE IN FARM PRODUCTIVITY

Farm property often declines in productivity as a result of transfers of ownership through inheritance. Frequently, several months or even years elapse between the death of a farmer and the final settlement of his estate. During this period of time, repairs to buildings, fences, etc., and fertility practices necessary for main-

tenance of cropland and pastures may be deferred until the future ownership is known. Thus, uncertainty as to future ownership of the farm tends to create a situation in which cash expenditures are kept to a minimum. The result is a decline in productivity. If at all possible you should consider providing in your will for the continued operation of your farm during the period of time required to settle your estate.



A similar decline in productivity may occur when the settlement of an estate results in the heirs owning undivided interests in the farm, for usually there are two or more heirs with but one farm to share among them. This condition arises more frequently in intestate inheritance (without a will). It also occurs when farmers provide for the creation of undivided interests although they prepare wills. Unless close attachment to the home farm exists mutually among the heirs, the farm may be operated under unstable tenure arrangements for a period of years. During this time cash expenditures, especially to improve or maintain the farm, are kept to a minimum. The result may be a rapid decline in productivity and sizable reduction in the value of the farm.

Frequently when joint ownership results from inheritance, one heir attempts to buy the undivided interests of other heirs in the farm property. In some families his problem of acquiring title is readily and easily solved by a mutual agreement among the heirs. In other families acquiring full ownership is a long drawn-out process of bargaining with each individual heir. One study showed that less than one-fifth of such transfers were made immediately. A considerable number required 10 years or longer. Often one heir was able to buy interests of one or two others immediately after death of the parents but five years or more were required to obtain full ownership. Such delays often prevent improvements from being made. Likewise, there is a tendency to postpone expenditures to maintain productivity.

An example of the complications that can arise is shown by what actually occurred in the settlement of one estate. Although the former owner died more than 24 years ago, the present owner must still acquire an additional $9/70$ interest before all fractional interests,

created in the settlement of his father's estate, are reconsolidated under one person. The size of the farm is 150 acres. It is easy to understand why the son buying the various undivided interests hesitated for many years to invest in its upkeep. There was nothing to protect him from possibly paying for the improvements a second time when he bought out the undivided interests. Provisions might have been included in a lease or other written agreement for his protection, but there was no such agreement.

Period between death and transfer	Interest acquired by present owner	Type of transfer to present owner
At time of death --	1/10	Inheritance, according to laws of descent.
5 months -----	1/70	First heir conveyed her interest to 7 heirs.
1 year -----	3/70	Second heir conveyed his interest to 5 heirs.
6 years -----	8/70	Purchased foreclosed interest of third heir.
11 years -----	9/70	Purchased interest of fourth heir.
13 years -----	9/70	Purchased interest of fifth heir.
23 years -----	1/10	Purchased inherited interest of sixth heir.
23 years -----	9/70	Devised interest by seventh heir.
24 years -----	8/70	Purchased interest of eighth heir.
Total interest acquired ----	61/70	

Life estates are another type of ownership under which the productivity of farm land and the condition of farm buildings tend to decline. Most life estates in farms are held by widows and their limitations with relation to farm upkeep were discussed in a previous section. However, life estates are not confined entirely to widows, and when held by others, they frequently result in exploitation of the land as the life tenant endeavors to obtain the largest possible cash income during his tenure. The life tenant generally cannot designate the owner of the property after his death. Thus any investments he makes in the farm do not pass to his heirs in event of his death unless they hold the remainder interest in the property subject to the life interest.

TAXES

Property transfers, either as an inheritance or a gift, may be subject to taxation. In addition to Federal estate and gift taxes, some states have state inheritance and gift taxes to consider.

A detailed discussion of taxation is not possible in this bulletin. Farmers making plans for the transfer of their property should discuss the tax problem with either a lawyer or a tax specialist. Estate, inheritance, and gift taxes may be involved. In addition, it is often

desirable to consider the relation of appraised values of estates to future sale values and income taxes on capital gains.

Farm values have increased greatly in recent years; \$25,000 farm businesses are not uncommon today, and many farms are worth several times that amount. Thus, a larger proportion of farmers' estates are now subject to inheritance taxes than previously, and the amount of tax is greater.

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Federal Extension Service

E. P. Callahan

This bulletin describes the general situation with respect to the laws of the Southern States as of July, 1953. It is important to remember that these laws may be changed by later legislation or court decisions. The bulletin is merely suggestive and should be used only as a guide.

<p>JOHN SMITH</p> <p>LAST WILL AND TESTAMENT January 6, 1954</p>	<p>State of Virginia County of York</p> <p>John Smith</p> <p>TO John Smith, Jr.</p> <p>Real Estate</p> <p>I, the said John Smith, do hereby give, devise and bequeath unto the said John Smith, Jr. all that certain parcel of land and premises situate in the County of York, State of Virginia, and more particularly described as follows to-wit:</p> <p><i>1/2 ac. more or less</i></p> <p>Witness my hand and seal this 6th day of January, 1954.</p> <p>John Smith</p> <p>Attest: My Attorney At Law Richard Doe, Esq.</p>
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