

Property Ownership in Kansas

Forrest Buhler, Staff Attorney Kansas Agricultural Mediation Services

I. Two general categories—Real and Personal property

- A. Real property. Real property includes land, attached structures, and mineral rights.
- B. Personal property. Personal property includes both tangible and intangible property.
 - 1. *Tangible* personal property includes such things as household goods, automobiles, business or farm equipment, livestock, and stored grain.
 - 2. *Intangible* personal property includes bank deposits, life insurance policies, stocks and bonds.

II. Types of title ownership

- A. Fee Simple Absolute. The owner (or owners) generally has the power to sell, borrow against, receive income from, lease, and transfer property to others during life of the owner or at death.
- B. Life Estates and Remainder Interests. Holders of a life estate—the life tenants—share property interests with “remaindermen” (the persons designated to receive a transfer of the property after death of the life tenant).
 - 1. Life tenants manage and receive income from the property during their lifetimes, but cannot dispose of it at death.
 - 2. Life tenants generally may not sell or mortgage the property without the permission of the remainderman and are generally responsible for property taxes, mortgage payments, and property maintenance.
 - 3. It is important to note that the terms and provisions of a life estate may vary, depending on the instrument creating it.
- C. Sole Ownership. With sole ownership, only one name appears on the deed or title. All solely owned property becomes a part of the owner’s gross estate and upon death, passes to named beneficiaries under a will or to heirs according to Kansas intestate laws (where there is no will).
- D. Co-ownership. Co-ownership of property occurs when two or more persons hold legal title to the property. There are two kinds of co-ownership in Kansas: Tenancy in Common and Joint Tenancy.

III. Definitions/ Characteristics of Tenancy in Common and Joint Tenancy

- A. Tenancy in Common. Involves multiple owners, each of whom has a partial, undivided interest in the property. A tenancy in common is generally created by the words “to A and B.” A transfer “to A or B” or “to A and/or B” also denotes a tenancy in common. The basic characteristics of a tenancy in common are as follows:
1. *Sale or disposition*. Should one of the tenants in common wish to dispose of the property, this can be done by mutual agreement or the court can decide how best to dissolve the co-ownership (partition).
 2. *Death of a tenant in common*. When a tenant in common dies, his or her undivided property share passes to the beneficiaries specified by will or, if no will exists, to heirs under Kansas intestate laws. Property does not pass to the co-owner unless named as the beneficiary in the will, or unless the co-owner is considered an heir under Kansas intestate laws.
- B. Joint Tenancy. Involves multiple owners, each of whom has a partial undivided interest in the property, with the right of survivorship. A joint tenancy is generally created by the words “to A and B as joint tenants with right of survivorship and not as tenants in common.” Kansas law says that a transfer of real or personal property to two or more persons shall create a tenancy in common, unless the language used in the transfer document makes it clear that a joint tenancy was created (K.S.A. 58-501). The basic characteristics of a joint tenancy are as follows:
1. *Sale or disposition*. Each owner can terminate the joint tenancy by agreement, by requesting that the court partition the property, or by selling that owner’s interest.
 2. *Death of a joint tenant*. The right of survivorship controls the disposition of property at the death of one co-owner. Property owned in joint tenancy immediately passes to the surviving joint tenant(s). Wills or state intestate laws do not control property held in joint tenancy.

IV. **Ownership in Trust.** (K.S.A. 58a-401 *et seq.*)

- A. Definition. Legal title to property (real or personal) held by a trustee who manages the property for the benefit of someone else. A trust is an artificial entity created by a written instrument with instructions as to how property will be managed and ultimately distributed.
- B. Parties involved. *Grantor* is the person setting up the trust and transfers property into the trust. The *Trustee* is the person who receives the property, manages it, collects income and handles the accounting. The trustee holds title to the trust property (corpus/principal) but has no personal ownership rights in the property. *Beneficiaries* are the recipients of the income from the property or the trust property itself.
- C. Types of Trusts. There are two basic types: *Living trust* (inter vivos) and *Testamentary trust*. A living trust is established by the grantor during his or her lifetime. A testamentary trust is established by a will and becomes effective at the death of the grantor. A living trust may be either *revocable*, which means it can be changed or terminated by the grantor at any time, or *irrevocable*, where the grantor cannot revoke or alter the trust.
- D. Tax Consequences. Whether or not the trust is revocable or irrevocable makes a difference in how the trust property and income is treated taxwise. The degree to which the grantor retains control over the trust benefits and property has a significant impact on the tax consequences. If the grantor retains the right to revoke, alter or amend the trust, the property remains in the estate for federal estate tax purposes and income from the trust is taxed as if the grantor still owned the property. If the grantor retains none of the benefits (i.e. to revoke alter or amend; no right to income; no right to return of any of the principal) the transfer is complete and the property is generally not included in the grantor's estate.

V. **Transfer-on-Death Deed.** (K.S.A. 59-3501 *et seq.*)

- A. Form of the deed. An interest in real estate may be titled in transfer-on-death (TOD) form by recording a deed signed by the record owner of such interest, designating a beneficiary or beneficiaries of the interest. Such deed shall transfer ownership of the interest in the real estate only upon the death of the owner.
- B. Revocation or change of beneficiary. A TOD may be revoked or the beneficiary changed at any time prior to the death of the record owner by executing and filing an appropriate instrument at the register of deeds in the county where the land is located.

- C. Vesting of ownership in the beneficiary. Title to the interest in the real estate shall vest in the beneficiary on death of the record owner. If the beneficiary dies prior to the death of the record owner and an alternative beneficiary has not been designated then the TOD shall lapse.
- D. Motor Vehicle. A motor vehicle certificate of title may also be titled in TOD form. The beneficiary shall have no interest in the vehicle until the death of the owner and the beneficiary may be changed at any time.

VI. **Contractual Types of Ownership Used in Estate Planning**

- A. Life Insurance. A contract to pay money to a beneficiary with minimal delay and administrative cost. Proceeds may be made payable to: heirs or dependents to meet living expenses; the insured person's estate to pay debts, taxes, and other estate settlement costs; a trust to fund the the trust; heirs to equalize transfers of property under an estate. Liquidity is the main advantage of this tool.
- B. Annuities. A contract providing for regular payments, beginning on a fixed date, and continuing for a term of years or for a lifetime of one or more individuals. The payments received under the annuity may or may not equal the amount paid by the person to establish the annuity. Under a straight life annuity payments made to the person establishing the annuity generally stop on the persons death unless the contract provides for continuing payments to beneficiaries—a refund annuity.
- C. Pensions, IRAs, Payable on Death (POD) Accounts. Contractual arrangements providing for income and support during life. Provision for passing benefits on to heirs or beneficiaries is governed by the contract establishing these arrangements.

Note: Information contained in paragraphs I., II., III. and VI A. & B. is taken from the publication "Estate Planning: The Basics, Parts 1 and 5" of Extension Publication L-849 and L-853, by Joyce Jones.

Kansas Agricultural Mediation Services

2A Edwards Hall, KSU Campus

Manhattan, KS 66506-4806

1-800-321-3276

