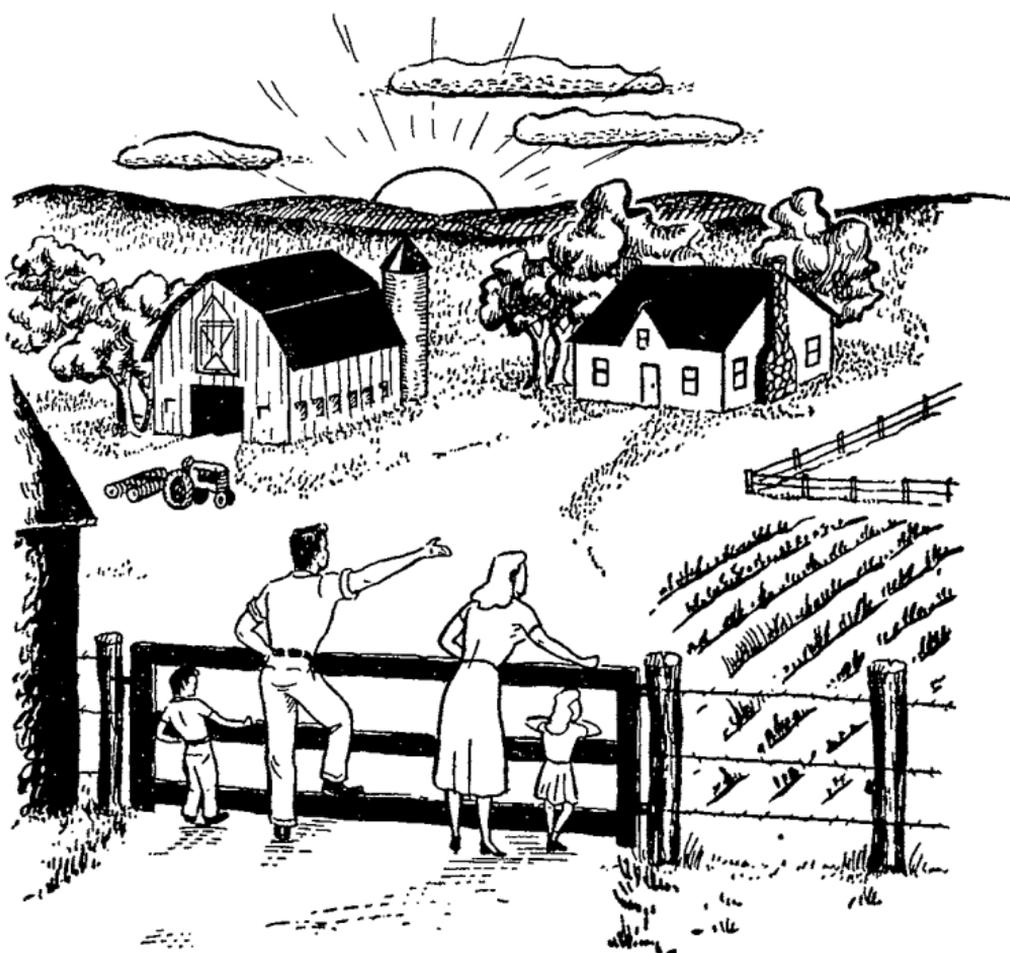


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Your Property AND Your Heirs



MARY MAY MILLER

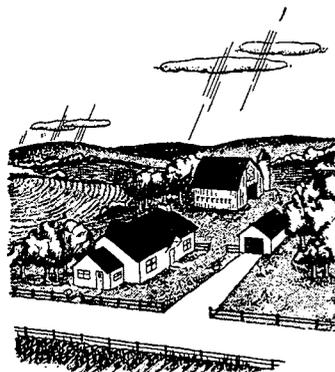
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WHAT WILL become of your property after your death? This question should be very important to you who want to prevent financial entanglements and worries for the family left behind. Your thoughtfulness in providing a will and other records will simplify the administration of your property or estate.

WHAT IS PROPERTY?

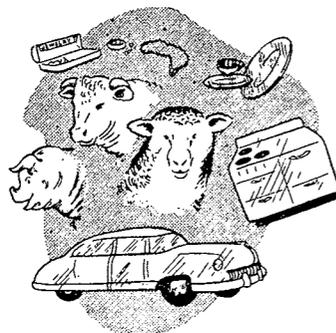
Property is the right for you to possess, enjoy, and dispose of land and other things. Your property rights are protected by laws regarding the types of property and the various forms of ownership. The two general types of property are: (1) real property and (2) personal property.



Real property is the immovable property that you can not take with you when you move away—the land, trees, fences, buildings, furnace, sink, and other fixtures attached to the buildings or the land. Although crops ready for harvesting may be real property, they usually are considered as personal property.

Therefore, when selling land, your agreement with the buyer should specify whether the crops—ready to harvest—go with the land.

Personal property is your movable property. Examples are: livestock, farm equipment, automobile, household goods, wearing apparel. Also personal properties are intangibles, such as life insurance policies, bonds, bank accounts, and negotiable notes.



WHO MAY OWN PROPERTY?

According to Minnesota law, the personal and property rights of women (single or married) are the same as those for persons in general. The Married Women's

Act states that married women have the same right to handle property as their husbands. Although minors may own property, management and disposal of the property must be done through a guardian.

LEGAL INTERESTS IN LAND—ESTATES

Your interest in property may vary from complete ownership to a temporary right of occupancy. Legal interests in real property are known as estates.¹ For the purposes of this discussion, the two most important legal interests in real property are: (1) estate in fee simple; (2) life estate. The nature of your interest in property determines what becomes of your property upon death.

Estate in Fee Simple. When you hold real property in fee simple, you are absolute owner during your lifetime and may dispose of it as you wish. If you fail to provide for its disposition at death, the real property will descend to your heirs according to law.

Life Estate. Under this plan, you are entitled to the use and benefits of the property for life. Your rights cease at death. The holder of a life estate is sometimes referred to as the "life tenant." Those who become owners of the property at the death of a life tenant are "remaindermen." As a life tenant, you cannot abuse the land to the extent that its value is greatly reduced. You may lease or sell your interest to another person. Parents frequently transfer property to their children, but retain a life estate.

In Minnesota, a farm homestead consists of not more than 80 acres, including the dwelling. In a city over 5,000 the homestead consists of the dwelling and not more than one-third of an acre of adjacent land. In a city or village less than 5,000 population, the homestead includes the dwelling and not more than one-half an acre of adjacent land.

OWNING PROPERTY TOGETHER

Although there are several ways for people to own property together, the two most usual ways are: (1) tenancy-in-common; (2) joint-tenancy with right of survivorship. It would be to your advantage to consult your lawyer before deciding on any type of ownership.

Tenancy-in-common. Each tenant-in-common owns a certain interest in the undivided property. If a widower dies without a will and leaving children, the children become tenants-in-common of the father's real estate, each owning an equal undivided interest. The owners, who need not be related, may hold unequal shares in the property. Each owner holds the

¹The common use of the word *estate* refers to all of the property of a decedent. The legal meaning of the word *estate* refers to the degree of ownership or type of interest.

share in the deed of conveyance and has the right to dispose of his share without the consent of the other owners. When one of the owners dies, his share will descend to his heirs and not to the other owners. The share held by one tenant may be seized for his debts. An owner may force a division of the land by a lawsuit called partition.

Joint-Tenancy. The distinguishing feature of this type of ownership is the *right of survivorship*. This means that an owner's share, upon death, will go directly to the surviving co-owner or co-owners. (The deceased owner's share is not a part of his estate.) Joint-tenancy is most commonly used with husband and wife as the joint tenants or owners. If husband and wife are joint owners of real estate, the wife will have title to the whole of that real estate if the husband dies before the wife or vice versa. The husband's interest automatically goes to the surviving wife upon his death. If the wife dies before the husband then her interest automatically passes to the surviving husband. However, to transfer the record of title upon the death of either of the joint tenants, a certain inexpensive procedure has to be followed for which you should consult your attorney. Whether or not joint-tenancy would be advisable for you would depend upon your individual circumstances. It would be well to discuss this with your lawyer before making a decision.

JOINT OWNERSHIP OF PERSONAL PROPERTY



Personal property may be owned together. Such ownership may simplify finances—especially for a surviving spouse. There are complications, however, which should be discussed with the family's lawyer.

Bank Accounts. Joint bank accounts, which are advisable for many families, should read, "Mr. John J. Nelson or Mrs. John J. Nelson." If you or your spouse should die, the bank account will belong automatically to the survivor who may continue to write checks against it. If the bank account is in the name of the deceased only, the account will be closed to withdrawals and will become a part of the estate which it may take months to settle. The surviving spouse may have to borrow money and may experience many embarrassing situations because of debts or other financial problems.

Stocks and Bonds. Joint ownership of stocks and bonds may prevent delay and expense. An acceptable wording to indicate ownership is, "John J. Nelson

and Jane F. Nelson, as joint-tenants, with right of survivorship, not as tenants in common."

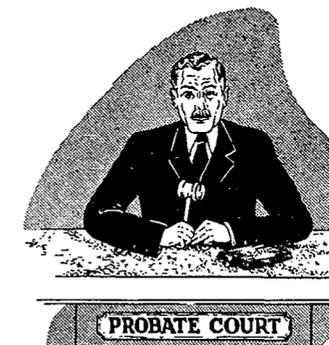
United States Savings Bonds. A choice of registration for these bonds is permitted by the United States Treasury. One form is, "John J. Nelson or Mrs. Jane F. Nelson"—indicating joint ownership. Another form is, "John J. Nelson, payable on death to Miss Edith Mae Nelson." In either case, if John Nelson dies without having cashed the bonds, the surviving co-owner, Mrs. Nelson, or the beneficiary, Edith, will be deemed the sole owner. If the bonds are registered in the name of John J. Nelson only, they will be included in his estate.

Safety Deposit Boxes. You can select the form of tenancy for a safety box that will best serve the family situation. The three common ways are to: (1) rent the box with you and your spouse as joint owners with rights of survivorship; (2) rent it in one of your names, designating the other as a deputy to enter; (3) rent the box in either of your names with no deputy named.

If the box is in joint ownership *with survivor's rights*, the survivor will have owner's rights. If the box is not in joint ownership, the survivor (if box is not in his name) will be barred from entry without certain probate court procedure.

Other Personal Property. Livestock, farm equipment, or the family car may or may not be held in joint ownership. Consider family situations before deciding.

YOUR PROPERTY AND NO WILL



If you fail to make a will, the laws of Minnesota will govern the descent and distribution of your property. The table on page 6 shows descent of your property other than the homestead—by law—when there is no will and no specific form of ownership which would distribute the property.

Homestead property descends in the same manner as other property with one important exception. If the deceased person leaves a husband or wife and a child or children or grandchildren (children of deceased children) surviving, then the homestead passes to the surviving husband or wife for the lifetime of that husband or wife. After the surviving husband or wife (life tenant) dies, the child or children or grandchildren get the homestead absolutely.

DESCENT OF PROPERTY—NO WILL	Wife or husband takes:	Children and children of deceased children take:	Father and mother take:	Brothers and sisters and children of deceased brothers and sisters take:	Next of kin take:	State takes:
Deceased leaving:						
Husband or wife—no children	All	...	...	...	...	...
Husband or wife—1 child	½	½	...	...	...	...
Husband or wife—2 or more children	⅓	⅔	...	...	...	...
No husband or wife	...	All	...	...	...	...
No husband or wife—no children or issue of deceased children	...	...	All	...	...	...
No husband or wife—no issue, no father or mother	...	...	...	All	...	...
No husband or wife, no issue, father, mother, brothers, sisters, or children of deceased brothers and sisters	...	...	...	...	All	...
No husband or wife, no issue, father or mother, brothers or sisters, next of kin	...	...	...	...	...	All

Your personal property will be distributed in about the same manner as real property. Your surviving spouse, however, will get the deceased's wearing apparel, goods, household furniture, and such other selected personal property of value up to \$1,000 and such other personal property up to \$500 in value as may be selected by the surviving spouse. Also, your surviving spouse would get one-half of the remaining personal property if there is one child and one-third if there are two or more children.

If livestock, farm equipment, and the family car are in your name, they will become part of your estate since there is no will. Farm operations, therefore, might be curtailed if some of the livestock and equipment should descend to other heirs living off the farm. A will or joint-tenancy might prevent such a tragic situation.

YOUR PROPERTY AND YOUR WILL

A will is a legal declaration of your wishes regarding the disposal of your worldly possessions after death. **Anyone who owns property (real or personal)—no matter how limited—should make a will.**

Advantages of a Will. A will makes it possible for you to name the *executor*. Otherwise, the probate court will name an *administrator* who may or may not be acceptable to the family and who is entitled to a fee. If you are a farmer, you may want to select an executor with good farming experience as well as

the usual qualifications—honesty, impartiality, successful experience in handling investments, wise judgment, and an understanding of estate procedure. If one person is to receive the bulk of the estate, that person would be the logical executor if capable of handling it well. Clear-cut provisions in your will may prevent a tie-up of the properties involved. If there is much delay, property may lose value or deteriorate while the estate is being settled. Most important, a will enables you to direct how your property is to go after your death, subject, however, to certain rights of your surviving spouse. These are discussed below.

Requirements for a Valid Will. Your will is a legal document written in legal terms. Most misunderstandings in descent of property are caused by misinterpretation of the words used. Write out your plan for disposal of property, then have a licensed lawyer state your wishes in legal words. (The cost for legal advice in drawing up a will is not so high that you can't afford a service that will assure you a document that will carry out your wishes—a valid will that can be probated with little delay.) Two copies should be made—the original which may be stored in your safety deposit box at the bank and the other may be left with the lawyer. The following requirements are essential to a valid will:

1. The maker—the testator—must be at least 21 years of age.
2. The maker must be of sound mind.
3. The will must be written or typed (except for men and women in military service).
4. The maker's signature must be witnessed by two competent persons—not beneficiaries under the will (preferably young persons who are likely to be available when the will is probated).
5. Maker must declare to witnesses that this is his last will and testament. (Witnesses need not know content of the will.)
6. Witnesses must sign with place of address in presence of each other—after the maker has signed.

Changing the Will. A good will is kept up to date. Situations in the family such as new births, deaths, financial changes, require a codicil—an amendment to the existing will. There must be two witnesses—not necessarily the same who witnessed your signature on the body of the will—and the amendment must be executed with the same formality as the original will. The will should be rewritten if exten-

sive changes are needed. (A will altered by erasures, inserted statements, or crossed-out words or lines is not a valid will.) **Don't fail to destroy the old will.**

Rights of a Surviving Spouse. You may will everything to your spouse. If your will leaves your surviving spouse less than this amount, the surviving spouse is entitled by law to one-half of the estate except the homestead if there are no children or one child, one-third if more than one child. A spouse, however, may consent to the will by a written statement of consent inserted in the will and then he or she is bound by that will. Neither spouse may disinherit the other by a will—the Minnesota law of descent being the same for husband or wife. A child may be disinherited in the will without one cent. The maker of the will, however, must mention his child in his will to show that he did not forget him, but it is enough to state that he intentionally left the child nothing.

Cost of Settling Estates. The cost of drawing and probating a will is probably about the same as the costs for an administrator appointed by the probate court if there is no will. The cost of the bond required of an administrator is charged to the estate. Also, the administrator is entitled to a fee. If there is a contest where there is no will or a homemade will, the cost may run high. Therefore, you can see that the money spent in drawing a will is a wise use of money. Remember that a will disposes of your worldly goods according to a plan and your desires. Your estate will be settled more quickly and with less worry for the surviving heirs—especially your spouse.

REMEMBER!

"The making of a will is one of the most important acts in a man's life. By his will he plans the disposition of the fruits of his entire life's work and the welfare and future of his loved ones."

This pamphlet is based on pamphlets prepared and issued by the Public Relations Committee of the Minnesota State Bar Association, Minneapolis 2, Minnesota. These pamphlets are: *Property is a Family Affair*; *Have You Made a Will?*; and *Joint-Tenancy—Boom or Boomerang?*

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