

Farm Management

Deeds show more than ownership

THERE are likely few documents more important to farmers than the deeds for their land. These documents may seem simple, but like most things in the law, they are much more complex than one might think.

A deed not only shows the transfer of land from one person to another, but also shows how the land is owned, what land is subject to the deed, and any re-



Country Counsel

By ROBERT MOORE

strictions that might have been placed on the land by the buyer.

Ownership

When land is bought by more than one person, the buyers must decide if they will own the land as tenants in common or joint with rights of survivorship.

TIC means each person owns an undivided interest in the land. A person owning a TIC interest may transfer his interest to another person without the permission of the other owner. A JWROS

ownership means that upon the death of one owner, the surviving owner(s) automatically receive his share.

This issue becomes most important upon the death of an owner. For example, John and Bill own land together as TIC. Upon John's death, he bequeaths his half ownership to his daughter Jane. Bill and Jane are now the owners of the land. If John and Bill own the land JWROS, upon John's death his entire half interest automatically goes to Bill, not Jane. If a deed does not designate JWROS, the law makes the ownership TIC by default.

Dower

Dower is a very old legal concept that provides a spouse an automatic ownership interest in the other spouse's real estate. This concept began in England to ensure that widows, who were not allowed to own land because they were women, were able to benefit from their deceased husband's land. While the concept may be out-of-date, it nonetheless is an important concept to deal with. Dower is not limited to wives; husbands also have a dower interest.

Type of deed

There are three primary types of deeds used in Ohio: general warranty, limited warranty and quit claim.

In a general warranty deed, the seller is guaranteeing he has clear title to the land. This guarantee extends back to the property's origins. A limited warranty deed only guarantees that the seller had clear title while he owned the land. A quit claim deed only transfers whatever interest the seller has in the land and makes no guarantee that the seller has any interest at all. Unless it's an intra-family transfer, sheriff's sale or other similar situation, land should never be purchased with a quit claim deed.

Restrictions on deeds

The seller can place restrictions on the land as part of the sale. Common examples are: reserving an easement for a driveway, reserving the opportunity to buy back the land if sold by the buyer, and reserving the mineral rights. The seller can make almost any restrictions he wants, provided the buyer will still buy and the restrictions do not make the land unmarketable or are not discriminatory in some way.

Who may or must sign a deed?

A person's ownership in land cannot be transferred without their signature. A common fear is that a co-owner will sell the land without getting the permission from the other co-owner(s). All owners, no matter how small their ownership, must sign the deed to transfer the entire ownership to the buyer.

An owner may have a power of attorney or trustee sign on his behalf, but the power of attorney document or an affidavit of trust must be recorded.

See the Power!

40TH ANNUAL



January
29, 30, 31
2010

OHIO EXPO CENTER
& STATE FAIR
COLUMBUS, OHIO

Agricultural,
Construction &
Outdoor Power
Equipment



See Your Power Equipment Dealer for Free Tickets



Four Buildings
300,000 sq. ft.
of Indoor Exhibits
Educational Seminars
Cooking Demonstrations
Kiddie Tractor Pull

Check our website, www.ameda.org/powershow for a complete listing of dealers that have tickets available. Tickets are also available by sending a Stamped envelope to: Power Show Ohio, PO Box 68, Dublin, OH 43017

Moore is an attorney with
Wright Law Co. LPA
614-791-9112
rmoore@wright-law.net