

Farm Management

A look at titles and real estate law

NO asset is more important to a farmer than land. Land provides the base for crop and livestock production and is usually the financial foundation of a farming operation. The ownership of land is referred to as title, and issues related to title can be complex and numerous. In fact, an entire area of the law is devoted solely to real estate and titles.

Law schools often use the concept of a



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“bundle of sticks” to describe real estate titles. Each stick represents a part of the total real estate bundle. For example, one

“stick” may be mineral rights, another stick may be mortgage rights, and another stick may be possessory rights.

Ideally, a landowner wants to own all the sticks in the bundle so he or she has complete ownership and control of the land. However, it is common for multiple people to own different interests, or sticks, in the same piece of real estate. A common example is one person owning the land and

another person owning the mineral rights to the land.

Marketable title

When purchasing land, buyers should be sure they are buying the entire interest in the land. This is known as marketable title. In essence, marketable title means the buyer is buying all the sticks in the bundle. The buyer should have a title search conducted to be sure there are no issues with the title in the land. A title that has defects is called a clouded title.

A title search is conducted at the county recorder's office and involves the process of examining previous deeds, mortgages, easements and other recorded documents related to a piece of land. The title examiner seeks to ensure that the title was correctly passed from one deed to the next and that no liens or mortgages remain on the property.

An example of a clouded title might be where land is transferred from family members to a buyer and one of the family members did not sign the deed. Other examples of clouded titles include unreleased mortgages or liens and dormant oil leases.

Title insurance is available to buyers purchasing real estate. In the event that the title is clouded, the title company will either resolve the issue or compensate the buyer for any damages caused by the clouded title. The cost of title insurance depends on the value of the land being bought. A transaction of \$1 million will have a title insurance cost of about \$3,500. Title insurance should be purchased unless the buyer is very familiar with both the land and seller.

Types of deeds

It is also important to know the different types of deeds and how they relate to title. Typically, three different types of deeds are used in Ohio: quit claim deeds, general warranty deeds and limited warranty deeds.

With a quit claim deed, the seller is only transferring whatever ownership interest he has. That is, the seller is not necessarily guaranteeing he owns all the sticks in the bundle, but whatever sticks he does own he is transferring to the buyer. Conversely, a general warranty deed guarantees that the seller has clear title and is transferring clear title to the buyer. A limited warranty deed only guarantees that the seller has had good title while he owned it; it does not guarantee that the title is good prior to the current owner taking title.

Obviously, the seller would like a quit claim deed as it limits his liability for good title, while the buyer wants a general warranty deed and the guaranteed title that goes with it.

Title insurance makes the issue moot because the title company is guaranteeing the title regardless of what type of deed it is. If title insurance is not being purchased, the buyer should negotiate to obtain a general warranty deed.

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