Farm Management

Lease may solve ownership questions

Country Counsel

By ROBERT MOORE

Key Points

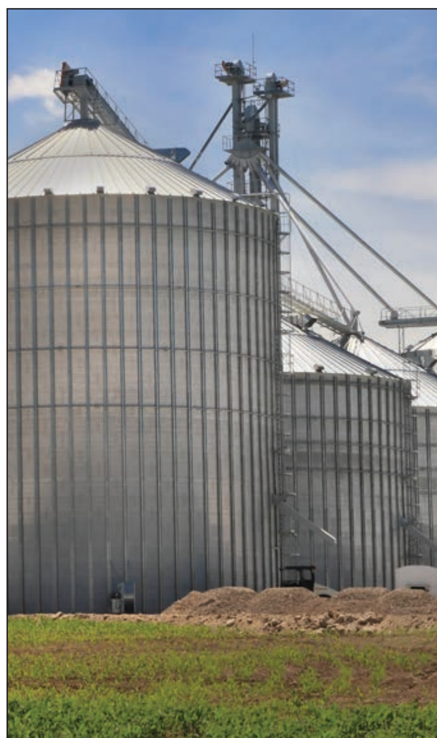
- Who owns an improvement built on someone else's land is a common issue.
- The landowner and improvement owner need a lease or written agreement.
- Drainage is an improvement that may require a long-term lease.

THE ownership of an improvement built on someone else's land is a common legal issue in the agricultural community. For example, a young man wants to build a new grain bin but does not yet own land. So he builds the bin on his parents' land since he is already farming with them.

Most of the time this works just fine and no issues arise. However, there are times when the landowner and improvement owner have a falling out, and the ownership of the improvement is in question.

While it is always better to build improvements on land you already own, the law does allow improvements to be made on other people's property. When this scenario occurs, the landowner and improvement owner should have a lease or other written agreement clearly stating the responsibility of each and resolving ownership issues with the improvement. A verbal arrangement related to improvements on another's land is fraught with risk.

The easiest means of dealing with this scenario is for the landowner and improvement owner to sign a lease. The lease should establish payment and length of the lease, and resolve the ownership of the improvement when the lease is terminated. Improvements can include grain bins, buildings and drainage tile. Additionally, both the landowner and the improvement owner should consult their tax adviser. In most situations the improvement owner takes the depreciation, but there can be different options.



The ownership of the structure at the end of the lease can be handled in a couple of different ways. One option is to make the lease long term and allow the improvement to be owned by the landholder at the end of the lease.

For example, a son builds a hog building on his parents' land. The lease is for 20 years, and at the end of the 20 years, the parents become the building's owners. The idea is that the useful life of the building is 20 years, and there is likely little value left in the building at the end of the lease.

Another option is to cause the landowner to pay the building owner the fair market value of the building at the end of the lease. Using the above example, at the end of the lease the building is appraised and the parents pay their son the fair market value of the building.

No written lease?

What if there is no written lease and the parties have a falling out? Ohio law would likely look to equity or fairness. If the landowner agreed to the building of the improvement and then forced the improvement owner off the land, the landowner would likely owe the improvement owner the value of the improvement.

For example, the son and parents have a verbal agreement for the hog house. In the fifth year, the parents and son have a dispute and the parents kick their son off the land. Ohio law would likely require the parents to pay the son the value of the building to "make him whole." As this example illustrates, there is risk for both the landowner and the improvement builder when relying on verbal arrangements.

If the improvement builder builds the improvement without the consent of the landowner, it is possible the landowner would receive the improvement without having to pay the builder compensation.

Drainage tile is also a common improvement paid by the tenant. This situation can also be dealt with in a lease. The most common manner is to require the landowner to compensate the tenant for the cost of the tile if the lease is terminated early.

For example, a tenant pays $50,000 for new tile on his landowner's farm. They sign a 10-year lease that requires the landowner to compensate the tenant for the cost of the tile if the landowner terminates the lease early. After the 10-year lease expires, the landowner becomes the owner of the tile.

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

Check your beneficiary designations

On the Money

By JOHN OTTE

Key Points

- Check beneficiary designations on life insurance, annuities, retirement accounts.
- Beneficiary designations trump what you put in wills and trusts.
- Even if you think your beneficiaries are in order, check, because mistakes are easy.

WHEN did you last check who you named as beneficiaries on your life insurance, retirement accounts or annuities? When you entered such contracts, you designated a beneficiary, and possibly a contingent beneficiary. Since then, marriage, divorce or which child will continue the farm may have changed.

Check beneficiary designations as you plan your estate. Life insurance policies, annuities or retirement accounts take precedence over what's in your will or trust.

During 1974 and 1975, I put about $700 each into two retirement accounts. One was a stock account; the other, an annuity.

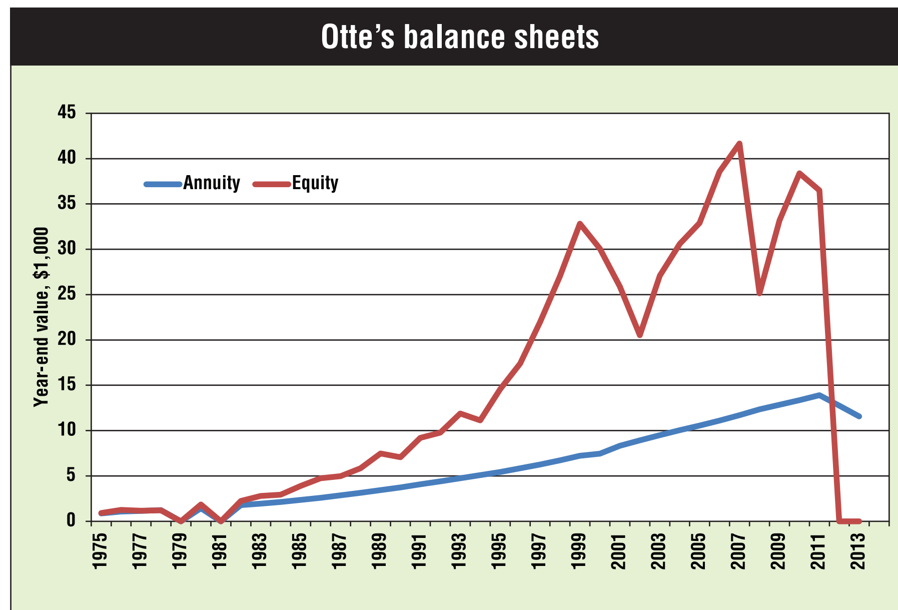
In 2007 we began comprehensive estate replanning. Our advisers, justifiably, insisted we provide copies of our beneficiary designations and make appropriate changes. Our trusts became contingent beneficiaries on every asset, including those two retirement accounts.

In 2012, I streamlined our balance sheet to simplify our estate settlement. I rolled the stock account into a traditional IRA. I tried to do the same with the annuity. The plan administrator requires such rollover distributions be made over 10 years.

We set up the 10-year distribution. I mistakenly believed I was merely repositioning to take annual withdrawals from the annuity account. Two years later, I've learned the account administrator closed the annuity account and opened a new distribution account. Since I did not understand we were opening a new account, I failed to designate a beneficiary and contingent beneficiary. That screw-up had potential to complicate settling our estates.

Otte is the farm management editor for Farm Futures *magazine.*

Otte's balance sheets



Tracking change: equities compared to annuities

WHEN I put equal money into a stock account and an annuity, I was young and naive. I did not comprehend that annuities are investments for risk-takers and failed to grasp the notion that inflation can erode their earnings. I'm older now.

For 37 years, I did not add another nickel to either account. I did not take any withdrawals. But I did track the account balances. Over that stretch, the annuity account rose 16.7-fold. The stock account rose 48.8-fold. By 2011, its value was 2.9 times the annuity's.

One implication is stocks may outperform annuities. But equities are not for the faint of heart. Over that stretch, the stock account had a 31% setback during the dot-com bust and a 21% retracement during the housing meltdown. If you speculate in stocks, you need to be able to withstand such inverse thrills and still sleep at night.

Still, looking back, I maintained my don't-touch-the-money position for about 36 and a half years too long. I should have moved the annuity money to the stock account in 1976. As I said, I'm older now.

— John Otte