

Ten Basic Steps to Understanding the Principles of Iowa Property Law

As someone interested in owning farmland you are talking about property law – the legal issues dealing with real estate. Today the focus is on helping you understand the key foundation principles of American property law. Law students spend a whole semester learning about property law – but for our purposes you can learn what you need by understanding these ten steps.

1. U.S. Property Law Evolved from British Law

First, property law in the U.S. evolved from the British common law, but our American approach to real property is based on the idea individuals can own the exclusive rights to occupy and use parcels of real property. This type of “complete” ownership is referred to as having “fee simple” title in contrast to other property interests involving fewer rights or shorter time periods, such as easements or farm leases for one year. As we will discuss in another session many other people may have some interest in how your land is used, but these are not “fee simple” ownership.

2. Property Rights are Like a Bundle of Sticks

Second, the most common way lawyers think about property law – and how law students learn it – is based on property rights being similar to a bundle of sticks. If you own all the sticks you have a fee simple title but if you only lease the property then your sticks – or rights – only include using it for the period of the lease. After that you must return the property to the owner in the same condition in which you received it. Thinking of property rights as being like a bundle of sticks makes it easy to realize how some sticks can be given or sold to others – for example selling an easement to a utility to run a power line overhead – without impacted the sticks you retain.

3. Individuals Property Rights Can be held by Others

Third, some property rights or sticks – can be separated from the fee title ownership of the land – and granted to others. These rights – like the utility easement - are intended to last forever - to “run with the land” - rather than being personal agreements between the parties. Farmland is considered “real property” – as contrasted to your tractor - it is personal property. Courts have spent centuries developing legal rules on “real property”.

4. Land Deals Must be in writing to Avoid the Statute of Frauds

Fourth, one important rule is any transaction or a contract - involving real property – must be in writing to be effective. Oral agreements to sell someone a farm or to leave land to another when you die will not be enforced by the courts. The legal principle is called the “statute of frauds” –this law requires all contracts for sums of \$500 or more - or involving real property must be in writing to be considered by the courts. The idea behind the statute of frauds is to require people to put important contract agreements in writing – this way the terms are clear and the parties signatures show their agreement. It is called the statute of frauds because allowing people to make claims based on claimed oral agreements creates too much potential for parties to make fraudulent claims to the courts. It is easier for the courts to say – if it isn’t in writing then it can’t be considered.

[One narrow exception is known as promissory estoppel, which means if the party trying to enforce the oral agreement can prove they took detrimental actions believing an agreement.]

5. Farm Leases for One Year May be Oral Rather Than Written

Fifth, one key exception to statute of frauds especially important to agriculture involves leases of land for one year or less. As you know many farm leases are oral agreements between the owner and tenant. These agreements do not run violate the statute of frauds because they are only for one year. Under Iowa farm lease law if notice to terminate isn't given by Sept. 1st the lease continues for one additional year. Thus oral farm leases may continue for many years – but legally they are a series of one-year agreements. But an alleged oral agreement to lease a farm for five years – or for life – would be unenforceable. So the best rule to follow is if you think you are agreeing to something involving land – then get it in writing - do not rely on oral or spoken promises.

6. Land Rights are Based on Locally Recorded Written Records

Sixth, American property law is based written records used identify the ownership interests in real estate. The most familiar is the deed – the legal document which represents the title to property – as passed from the past to current owner. Our property system is based on these ownership interests – or titles – being established by recording them in a county office. In Iowa this is with the county recorder who maintains a system of books – now computerized – of land records. The records are tied to the legal description of the property to indicate the ownership interests of record. When you buy land you receive the deed reflecting the “clear title” to own the land. The deed is recorded for a fee – with the county recorder. Once the deed is recorded it has the legal effect of putting everyone else on notice of your claim to ownership. Ownership claims to a tract of property are based on the priority in time when filed – that is why it is important record the claim with the county so it can be placed be enforceable against anyone else who might buy or claim the land.

7. Clear Title and Abstracting are Used for Land Transfers

Seventh, when property is sold – or transferred such as settling an estate – it is important the land records are checked and updated to determine if the new owner (or purchaser) will have what is known as “clear title.” This process is accomplished by a title search or examination of the land records designed to bring the “abstract” of the property up to date. The abstract is essentially a running record of all the claims ever made or existing against the property with the goal being to make it clear what the purchaser is getting. This service is typically done by the lawyers handling the transaction or by a title company which charges a fee to prepare the abstract. Buyers want “clear title” meaning the full fee simple. If a lender is financing the purchase they will also demand clear title so no one can make a better claim. This means for a seller to dispose of the property they must be able to provide a clear title. The abstract will identify any other claims that might exist in the title, for example the easement granted to the utility company. The buyer and seller will not be able to “remove” some claims but they will be aware of it. Other interests, for example the claim made by the seller’s bank when the land was purchased, will need to be removed or “satisfied” in order for the buyer to have clear title.

8. Creation of Property Rights is an Issue of State Law

Eighth, property law in the U.S. is an issue of state law meaning that the legal rules concerning the types of interests that exist and the procedures for resolving disputes are questions of Iowa law. There is no “federal” property law and while federal programs like those of the USDA may have an impact on farmland, actual claims to land in Iowa are issues of state law. There are no state-wide land records, instead all the records relating to land are kept at the county courthouse. This means if you own property in different counties the records will be maintained in the county where the land is located. The effect of having local records is to simplify the process of identifying interests in real property – you only have to look in one place – at the county level.

9. Recognizing the Variety of Property Rights Possible

Ninth, thinking about the types of rights or sticks that can exist in property is useful in considering how these interests can be separated. The use of property can be separated by time – such as when an owner leases land to a tenant or when land is given to a person to use for their life – a life estate – and then pass to designated remainders on death. The owner – known as the lessor grants the tenant – known as the lessee – the right to use and occupy the land for a set period of time subject to the terms of the lease – if in writing. A lease is considered to be like a sale for the period involved, and the tenant has the right to occupy and possess the land free from the interference of the owner – subject to the requirement the land is returned at the end of the lease in the same condition. Property interests can be separated by type of use rather than by time. The most common example of this are easements, which are legal interests held by other parties to make some use of the property – for example a utility easement, or to restrain the owner from taking certain actions. A conservation easement is designed to protect certain aspects of the property, a common example being a Wetland Reserve Program easement in which the USDA has purchased an easement to have farmland restored as a wetland. Interests in property can also be separated in space – for example the right to run a wind turbine overhead – or the severance of the underground mineral rights to another. Finally interests in property or sticks can be granted so they are held in common by a number of people, for example siblings owning a farm as “tenants in common” with an undivided interest.

10. Property Law is Flexible for the Party’s Needs

Tenth, American property law is very flexible – which contributes greatly to the success of our economy and society by making it possible for people to obtain and transfer property interests to

others. The courts and lawyers have shown great creativity in developing varying forms of property interests to help people realize their objectives. One effect of this creativity and range of property interests is to increase the complexity of the law and result in many issues requiring lawyers or the courts to help resolve. Even though property law can be complicated, the best way to understand any potential transaction or dispute is to follow a few basic rules. First, identify the type of legal interest involved, e.g., it is a sale, a lease, an inheritance, a conflict with neighbor or co-owner. Second, understand how the interest is being created, obtained or transferred, e.g., is it a sale, an inheritance, or because a neighboring property has been transferred. Third, determine from whom the interest is being obtained or how the legal issue has come about, e.g., does it involve a landlord, a neighbor, an easement holder. Fourth, consider how the issue or transaction involved may impact or affect your legal rights or interest in the property, e.g., is someone trying to claim an interest in your land or restrict what you can do on it. By following these basic steps –you will be in a better position to try and understand how the law might apply to your situation and be better able to ask questions of your attorney or other official to help you answer your questions.