

## Ten things to know about joint tenancy and tenants in common

1. One form of property ownership for farmland is to have multiple owners - known as joint tenancy or tenancy in common. In both types the owners are said to hold an undivided proportional interest in the property. For example if a husband and wife own farmland as joint tenants with the right of survivorship each has an undivided 1/2 interest in the land. If three siblings are tenants in common for a property they each have a 1/3 undivided interest.
2. The key difference between joint tenancy and tenancy in common is what happens on the death of an owner. For joint tenants with a right of survivorship the interest of the one who dies is transferred to the survivor and does not pass to the heirs of the deceased. With tenants in common, if one dies the proportional share owned by the deceased passes to their heirs as instructed who will now share the proportional, interest with the other ordinal tenants in common. You can see how the number of people who are tenants in common and their percentage shares can change over generations.
3. Tenancy in common is a frequently used legal tool to transfer ownership of farmland in Iowa. It is a convenient way for parents to treat all children equally. Rather than try to divide the property into individual tracts - which might risk breaking up the farm business - the whole property is passed as one tract to whatever number of tenants in common are created.
4. Tenancy in common can work well, especially if the property owners can agree on common goals and can communicate. However tenancy in common can also cause significant problems in the future - especially if siblings with different needs and objectives, long simmering resentments or other differences exist. Anyone with siblings can appreciate how these might be possible.
5. One important legal rule which can present challenges is the requirement that for tenants in common to take some action involving the property - such as deciding who to rent it to and at what price, or entering the land into a USDA program like the Conservation Reserve Program, all of the tenants in common must agree. The requirement there must be unanimity to act is because each tenant in common has a possessory interest in the property even though they may legally own a share.
6. Tenancy in common can also present challenges when the goals or needs of the co-tenants conflict. This is especially true if one co-tenant wants to sell their share

or otherwise realize its value so the money can be used for other needs. When the land involved is farmland this can cause significant issues especially if there is a co-tenant farming the land who wants to maintain the farm intact. In this case the other co-tenants might need to finance the purchase of the interest from a sibling.

7. The type of conflicts that can arise over how to farm the land or possibly sell it are apparent and can cause great strife within families. This is especially true in co-tenants no longer live near the farm or are not involved with the farm - or if they believe they have received little return from their property. The potential for conflict is compounded because Iowa law in Chapter ## gives any co-tenant the right to petition the district court to order the land "partitioned" to have it sold and the money divided among the co-tenants based on the percentage of their interests. The threat of a possible partition action can force co-tenants to negotiate possible transfers to avoid having the court act.

8. The general rule courts will follow in partition actions is to order all of the property sold (even in some co-tenants don't want this) as this is the clearest way to determine the fair value of the property and have value to allocate to the co-tenants. However courts will agree to order partitions "in-kind" where pieces of the property are allocated to different co-tenants if the parties can agree to such a division.

9. Because the risk of a future partition - and possible loss of the family's farmland is always present - the owners of the property, such as the parents, may try to include in the will creating the tenancy in common, instructions that any co-tenant who brings a partition action in the future will lose or forfeit their share. While this sentiment may be understandable courts are reluctant to enforce these provisions - from beyond the grave - and later take away a property interest once it was legally transferred.

10. While tenancy in common is widely used and can function well if the parties get along and cooperate, the potential for future conflicts is real and is good reason to consider other ways of transferring interest in property or treating heirs "equally" (which might not be the same as fairly). Other forms of property ownership such as using trusts or corporations may be an alternative, though it is important to recognize these tools can have their problems when it comes to issues of control and valuation, especially if the goals and needs of the parties differ.