

Special points of interest:

- Crop insurance
- Estate Planning Issues—Avoiding Probate
- Updating Legal Descriptions
- Tax issues: Charitable Contributions & Qualified Conservation Contributions

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Avoiding Probate without a Trust

A number of organizations market Living Trusts as a probate avoidance mechanism, often without the direct involvement of an attorney in preparing the documents. This often occurs when the organization also wants to sell other products to you, such as annuities. Some of these organizations have been shut down, because the selling of trusts without an attorney representing you is the unauthorized practice of law, with one organization being fined over \$1,000,000. The documents are sold through scare tactics about the horrors of probate. We have seen people who have purchased trusts for thousands of dollars to avoid the expense of probate when the probate expense for their estate would have been less than the cost of the trust.

If you do not need a trust for tax planning

purposes, there are other ways to avoid probate. For example, any bank account set up with joint owners with rights of survivorship avoids probate as between the owners. In addition, other beneficiaries could be set up to receive the account outside of probate with a Payable on Death (POD) designation. To avoid probate, you may title securities, such as stocks, bonds, mutual funds and brokerage accounts, with a Transfer on Death (TOD) designation. You also may use a TOD designation with real estate and with motor vehicles. If you name beneficiaries for your life insurance policy or retirement account, you will avoid probate with those assets.

If you are using a trust or POD and TOD designations, you will need to re-title the assets you own and be careful how new assets you purchase are titled. However, you may need to

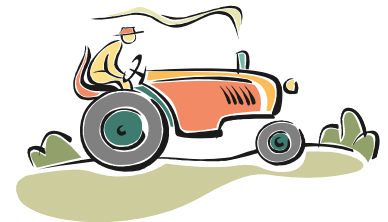
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Recent Cases Concerning Claims Against Ohio

Some recent cases have been decided in the Ohio Court of Claims to which Ohio farmers should be aware. The first series of cases arose from Wyandot County, where numerous farmers made a claim for crop damage as a result of high mast lighting installed along the US-30 Expressway. Several farmers brought claims against the state for crop damage they alleged occurred as a result of the new lighting system. The plaintiffs argued the crop sections underneath the lights would not mature due to the constant light exposure.

The Court ruled the State’s installation of the lighting system that resulted in the loss of bean crop production constituted a “taking” under Ohio law and was compensable. For a “taking” to occur, a governmental activity must substantially interfere with an owner’s property right. The actual harm a plaintiff suffers must differ “in kind” rather than “in degree” from the general public. That was the situation in this series of cases with the roadway lighting. The Court allowed the affected farmers to recover several thousand dollars in damages for the losses in yield for which the lighting was responsible.

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Farmers Can Use Federal Crop Insurance To Manage Risks

Q.: *What is federal crop insurance?*

A.: The federal government heavily subsidizes premiums on so-called multi-peril crop insurance for more than 100 crops ("covered crops") through a wholly-owned government corporation – the Federal Crop Insurance Corporation (FCIC). The FCIC is managed by the U.S. Department of Agriculture's Risk Management Agency. Additional types of federally subsidized policies (e.g., revenue insurance, yield-based insurance) are offered for some crops. Such insurance is actually offered through, and serviced by, private companies that have entered into reinsurance agreements with FCIC. The Federal Crop Insurance Act and USDA rules and regulations are incorporated into the reinsurance agreements.

Q.: *Is all crop insurance on covered crops federally subsidized?*

A.: No. Basic hail and fire insurance are offered through private companies without federal subsidy.

Q.: *Are all U.S.-grown crops covered by federal crop insurance?*

A.: No, but most major crops grown in Ohio are covered. If a crop is *not* covered by federal crop insurance (e.g., Christmas trees), then the crop may be eligible for USDA's Noninsured Crop Disaster Assistance Program when there are low yields or loss of inventory, or when natural disasters prevent farmers from planting.



"Knee high by 4th of July"

Q.: *If federal crop insurance is offered for a particular crop (e.g., apples, corn, soybeans or wheat), must agricultural producers buy the insurance?*

A.: No. However, producers participating in federal government farm programs waive their eligibility to receive emergency crop loss assistance from USDA for any crop for which insurance is available and for which the producer failed to purchase crop insurance.

Q.: *How long does a producer have to resolve a dispute involving a federal crop insurance policy?*

A.: A producer should first try to resolve the dispute with the private company offering the crop insurance. However, all FCIC-backed policies require that legal action (though not necessarily a lawsuit) be brought within 12 months of the claim denial. The USDA has interpreted this provision as being a contractual limitations period for bringing claims. In other words, producers cannot seek a legal remedy if they fail to start a legal action within the 12-month period.

(Continued on page 5)

Charitable Contributions

by Jeff Easterday

Contributions to qualified charitable organizations can provide important tax benefits; however, the rules can be complex. Contributions are deductible from income tax only as itemized deductions. Therefore, a taxpayer must itemize to deduct charitable contributions. Contributions may be made in cash or in property, including real estate, stocks, bonds, mutual funds, and so forth.

There are tax advantages to giving appreciated property such as appreciated stocks to a charity, since the taxpayer can claim a deduction while avoiding capital gain tax that would apply if the property were sold.

The amount of charitable contributions that may be deducted in one year is limited, although excess deductions may be carried forward and deducted over the following five years. The deduction for charitable contributions is generally limited to 50% of adjusted gross income. However, the deduction for contributions of appreciated property is generally limited to 30% of adjusted gross income. For certain types of charitable organizations, the deductions are lower.

For example, if adjusted gross income (AGI) is \$100,000, cash contributions of up to \$50,000 to qualified organizations may be deducted on that year's taxes. However, if the \$50,000 contribution is of appreciated stock, only \$30,000 (30%) may be deducted in that year and the balance will be carried forward for deduction in the next 5 years.

If a taxpayer has excess contributions that have not yet been deducted and the taxpayer dies, there will be no carry over of excess contributions beyond the decedent's final tax return (for the year of death).

For taxpayers who are age 70½ or older, qualified charitable distributions may be made directly from the trustee of their IRAs. The distribution can be tax free, although no deduction is available. Qualified charitable distributions are limited to \$100,000 for the year.

In addition to making outright gifts to charities, there are a variety of charitable trust plans available in which charitable contributions may be combined within specific types of trusts, with an interest retained by the Grantor of the Trust.

See the related article on *Qualified Conservation Contributions*.

(Continued from page 1, "Avoiding Probate")

monitor assets owned POD and TOD more closely in the future than if you used a trust. For example, you may not name a class of beneficiaries on a deed for real estate. Instead, you must list each beneficiary by name, such as: John Doe TOD John Doe, Jr. if he is living, or if he is deceased to John Doe, III and Jane Doe. If John Doe, Jr. has another child after the creation of the deed, John Doe will need to amend the deed. This is not a problem with securities if you use the following designation: John Doe TOD John Doe, Jr. LDPS. The "LDPS" stands for lineal descendants, per stirpes, which is a class gift that adjusts automatically regardless of how many descendants may be born to John Doe, Jr. after the designation is established.

These alternative methods for avoiding probate may assist you to easily avoid probate without going to the expense of a trust. For small estates, this may work fine, but for larger estates you may find that a trust works better for estate tax planning and probate avoidance combined. The estate tax savings potential begins when the combined estate of a husband and wife in Ohio is over \$338,334. The tax savings increases as the estate size increases, with potential tax savings of approximately \$22,000, if the combined estate is \$676,668, to more than \$1,000,000 in

federal and Ohio savings in certain circumstances.

Please remember that having a trust does not by itself avoid probate. You have to transfer your assets to the trustee of the trust prior to your death, or use the TOD, POD or other beneficiary designations naming the trustee of the trust as beneficiary, if you want to avoid probate. It is also good from time to time to review how your assets are titled to see if any changes may be appropriate.



Russell N. Cunningham
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The Estate Planning letter study is available for free online at:

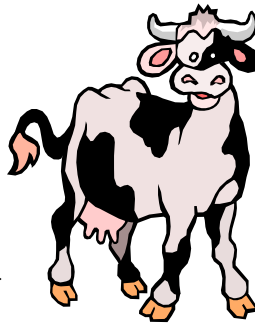
<http://ohioline.osu.edu/epfact/index.html>

Soon available for sale in printed form.

(Continued from page 1, "RECENT CASES")

Another recent claim made against the state of Ohio occurred in Noble county. A farmer made a claim for a calf that died as result of eating cherry tree branches cut down during an ODOT tree trimming maintenance operation along a right-of-way adjacent to a state road. The leaves of a cherry tree are highly toxic to cattle. The owner brought suit alleging ODOT was negligent in leaving poisonous vegetation within easy reach of his animals.

The Court ruled that ODOT was not subject to sovereign immunity for its maintenance actions and that the ODOT employees should have foreseen the consequences of leaving the poisonous limbs in a grazing field. The owner of the livestock, however, was a licensee on ODOT's right of way, as the fence line of the pasture was located within the right-of-way land. Defendant successfully argued the plaintiff received a benefit from being permitted to use additional grazing land on the state's right of way and the department of transportation received nothing in return from this permitted use. Therefore, Plaintiff was a licensee on Defendant's land and Defendant was only legally liable for injuries proximately resulting from willful and wanton misconduct. An owner of land owes no duty of ordinary care to those persons who enter the land, not on



the owner's invitation, but through permission and acquiescence for a benefit. Such individuals are considered licensees under Ohio law and are subject to the accompanying perils and risks.

A licensor does not owe a licensee any duty except to refrain from willfully injuring him. The Court found that Plaintiff could have reasonably expected to discover the presence of the trimmed cherry trees and the potential dangers associated with the trimming. Plaintiffs claim was therefore denied.

The lesson to be learned from this case is that an owner of livestock always needs to be aware what is going on around the periphery of the property lines that contain grazing livestock. Situations like this arise all of the time and a livestock owner may not know that grazing land may encroach on the State's right of way. The lack of awareness could prove to be fatal to any livestock that wander into the situation.

By Troy Callicot



Increased Deductions Available for Qualified Conservation Contributions

The Pension Protection Act of 2006 provides enhanced opportunity to deduct qualified conservation contributions made in tax years beginning after December 31, 2005 and ending before January 1, 2008. The

Act increases the percentage limitation for deduction of qualified conservation contributions (from 30% to 50% of adjusted gross income (AGI) and increases the carryover period to claim excess qualified conservation contributions from five years to 15 years.

For qualified farmers or ranchers whose gross income from farming is more than 50 percent of gross income for the year, the 50% limit discussed above is increased to 100%. For contributions made after August 17, 2006, the 100% limit is only available if the contribution is subject to a restriction that the property remains available for agriculture or livestock production. Otherwise, the 50% limit applies.

In calculating the contribution limits and carryover, contributions other than qualified conservation contributions are considered first.

Did you know?

A Former Owner May Testify to Value of Real Property

A recent opinion from the Clermont County Common Pleas Court establishes that a former owner may testify to the value of the real property without having to qualify as an expert witness. The Ohio Rules of Evidence, under the owner-opinion rule, permit an owner of real property to testify to the property's fair market value. This rule is based on the presumption that the owner possesses sufficient acquaintance with the property to estimate its value, even though not qualified as an expert witness. The recent Court opinion extends the owner-opinion to former owners or co-owners, provided the former owner had remained intimately familiar with the property since relinquishing ownership.

Top 20 Reasons to Update

Your Real Estate's Survey and Legal Description

by Carolyn Eselgroth

1. The latest survey was at the time of the Revolutionary War grant
2. The legal description refers to the old oak tree on the corner of the back property line when no trees now exist
3. The property has been transferred only at death through two or more generations of your family
4. The legal description refers to "chains" and "links" and "rods"
5. You've sold or otherwise transferred more than two lots or slivers off the same parcel
6. You discover you've been paying property taxes on land grandpa sold 30 years ago
7. The river has changed course through the bottom land during the past 20 years
8. The legal description acreage, the FSA acreage, and the auditor's acreage are all different for the same parcel
9. You suspect your neighbor's line fence is over your property line or your fence is over his
10. The legal description refers to "ground glass under a stone," a deer path, the spring at the top of the hill, or the old Mabry farm
11. You learn great grandma's will was not properly probated and she has more relatives than you ever knew
12. You want to separate your residence from the rest of the parcel
13. The county engineer has stamped your deed "no transfer without new legal description" or similar words
14. The city has renumbered the lots in your subdivision
15. Your legal description's courses do not match those on your survey
16. You need to sell part of a parcel to pay your bills
17. Your land was split by a major highway
18. The county engineer refuses to approve the description because it will not "close"
19. Your old description includes land that doesn't belong to you anymore
20. The easement to the back 40 described in the recorder's office isn't wide enough for modern farm equipment



(Continued from page 2, "CROP INSURANCE")

Q.: Where does a producer go to resolve a dispute involving a federal crop insurance policy?

A.: In most situations, a producer must try dispute resolutions methods before a court will review the dispute. Insurance policies that are backed by the FCIC require certain disputes to be resolved through mediation or arbitration. In general, mediation or arbitration is required for any dispute about the facts of a situation. A dispute about a policy or procedure must first be taken to the FCIC for agency review. If arbitration is used, the arbitration must be conducted in accordance with the rules of the American Arbitration Association (AAA).

However, any dispute resolution organization may be used, provided the organization applies AAA rules to the proceedings.



Q.: Can a producer negotiate the terms of an FCIC-backed crop insurance policy?

A.: No. Federal regulations and rules specify the terms of the crop insurance policies.

This article was initially prepared by Attorney David C. Barrett, Jr. for the Ohio State Bar Association and featured in OSBA's weekly publication called "Law You Can Use", a consumer legal information column.

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If we are not available when you call, your call will roll over to either a receptionist or our voicemail.

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Professional Accolades

BECE is pleased to announce that our attorneys and staff continue to be recognized by others:



- BECE is proud to announce that BECE Office Manager/Paralegal Rhonda Williams has earned the designation of "OSBA Certified Paralegal" from The Ohio State Bar Association. Rhonda is one of only 82 paralegals in Ohio to have earned the designation. An "OSBA Certified Paralegal" must meet the OSBA's definition of an eligible paralegal and successfully pass the OSBA's written examination after satisfying specified education/experience, continuing legal education, and reference requirements. *WAY TO GO, RHONDA!!!*
- CONGRATULATIONS to Jeff Easterday, who has been elected by his peers as the 2007-2008 President of the Delaware County Bar Association.
- CONGRATULATIONS to David Barrett, who was reappointed by Ohio State Bar Association President Rob Ware as chairman of the OSBA Agricultural Law Committee for 2007-2008.



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Our firm provides a wide range of business-related legal services, including a special emphasis on serving the needs of agricultural producers and agribusiness clients. Areas of emphasis include agricultural legal issues, business and estate planning, agricultural finance, commodities law, commercial transactions, environmental law, estate/probate administration, federal farm program issues, government regulation, land use planning, real estate, like-kind exchanges, income and estate tax law, litigation and dispute resolution. The firm is headquartered in Dublin, Ohio, a northwest suburb of Columbus.

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