



## AGRICULTURAL LAW AND TAXATION BRIEFS

DEPARTMENT OF AGRICULTURAL AND CONSUMER ECONOMICS, UNIVERSITY OF ILLINOIS AT URBANA-CHAMPAIGN

### FARM OWNER'S DEATH: CAN TENANT CONTINUE FARMING UNDER THE LEASE?

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*Synopsis: This article summarizes the right of an Illinois farm tenant to continue operating the farm under the existing lease after landowner dies. As a general rule, the tenant's lease of farmland continues after the death of the landowner under the terms agreed to by the landowner before death, even if it is a multi-year lease. The same general rule applies if the owner becomes mentally incompetent or sells the farm to another (assuming the lease, itself, does not limit the tenant's rights in such circumstances). Rents that would have been paid to the now deceased or mentally incompetent landowner will be paid to a different person or entity such as an executor or guardian. Special rules apply where the landowner had a "life estate" in the farmland, rather than ownership in "fee simple". This article is part of a law-related educational program for Illinois family farmers made possible by a gift from the Illinois Bar Foundation. The assistance of the Agricultural Law Section Council of the Illinois State Bar Association in reviewing and otherwise assisting with the preparation of the article also is appreciated.*

Suppose an Illinois farmland owner dies, is declared mentally incompetent by a court, or sells the farm. What is the effect of such an event on the tenant's right to continue farming the land under the existing lease? This article describes the general effects of such events on farm tenancies under Illinois law. In particular situations, legal counsel may be needed to address various issues that may be present.

#### **General Rule Regarding Death or Mental Incompetence of a Landowner: Farm Lease Remains Effective According to Its Terms**

As a general rule, a valid farm lease between a landowner and tenant remains effective according to its terms when the owner dies or is declared mentally incompetent by a court.

*Example 1: Written three-year lease.* If Greenacre Farm is owned by X and if X and Farm Tenant have a valid written three-year lease, the lease remains effective according to its terms following X's death, e.g., in the first year of the lease term. Similarly, if X is declared mentally incompetent by a court (for example, because of dementia resulting from Alzheimer's disease), the Illinois lease is still effective according to its terms following the court declaration of mental incompetence.

Example 1 illustrates that, under Illinois law, the lease remains effective according to its terms after Landowner's death. However, the death or mental incompetence of the owner could impact the tenant if

the lease contained a provision that is triggered by the death or incompetence of the owner. Assume, for example, that the farm lease contained a special provision stating that if owner dies in the first or second year of a three-year lease, the lease will terminate on March 1 following the death. In this case, Illinois law provides that the lease remains effective according to its terms when landowner dies, but the *terms of the lease* provide for early termination when owner dies.

*Example 2: Oral year-to-year lease.* If owner and tenant have an oral "year-to-year" lease, does the lease remain effective? (A "year-to-year" lease is a lease that is automatically reborn for another year if proper notice to terminate the lease is not given – see ALTB 07-01, *SHOULD A FARM LEASE BE WRITTEN AND IS AN ILLINOIS FARM TENANT PROTECTED IF THE LEASE IS ORAL?*). If landowner died or was declared mentally incompetent after the deadline for sending notice to terminate the lease, the year-to-year lease would continue to be effective according to its terms, as a general rule – just as in Example 1 involving a lease for a fixed term of three years.

In summary, as a general rule the death or mental incompetence of a landowner has no effect on a valid written or oral lease entered into before the death or incompetence of the fee simple owner of land; the lease remains effective according to its terms. Of course, the executor or heirs of the deceased owner, or the court appointed guardian for the mentally



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incompetence owner, will step into the shoes of the owner and will exercise whatever rights the owner would have had under the lease, including the right to receive the rent payments required by the lease. Also, when the time comes to renew the lease, the farm tenant will need to deal with the executor of the estate or with the heirs who have inherited the farm, or with the owner's guardian if the owner is still alive but has been declared mentally incompetent.

### **Similar Rule for Illinois Year-to-Year Leases When Owner Has a "Life Estate" Rather Than "Fee Simple" Ownership (Farm Tenant also may be entitled to compensation for fall field work)**

*Example 3: Life Ownership vs. Fee Simple Ownership.* A "Life Estate" is an estate in land (a possessory interest in land) that is measured by the life of a person. For example, assume husband dies and, by the terms of his will, bequeaths his farmland (Brownacre Farm) to his Surviving Spouse "for the rest of her natural life" and then to their three children, A, B, and C. In this situation, the Surviving Spouse acquires a "life estate" in Brownacre Farm. [Hereafter, we will refer to a person with a life estate as a "life owner".] During the life of Surviving Spouse, her "life ownership" is similar to being a "fee simple" owner of the farm. [Note: trusts have largely replaced the life estate in estate planning, but there are still many "life owners" of Illinois farms.]

Ownership in fee simple is sometimes called "outright" ownership of real estate – it is the highest form of land ownership recognized in Illinois and is also the most common. Both a fee simple owner and a "life owner" are entitled to possess the land or to choose the farm operator, and to receive the profits or rents from the land, while living.

The key difference between fee simple ownership and life ownership is that a fee simple interest is of infinite duration (the property interest lasts forever) and is inheritable. The fee simple owner, at least in theory, controls the land during his or her life *and also* after he or she dies. Thus, a fee simple owner can (e.g., by a bequest in owner's will) transfer the fee simple interest in a farm to a surviving spouse or child, or to a trust, charity, etc. Similarly, a valid lease signed by a fee simple owner and granting to Tenant the right to possess the farm for three years is binding on the executor and heirs of the fee simple owner. This is because the fee simple owner had the right to control forever who will possess the land.

In contrast, in most states a life owner only has the right to possess and control the property *during that person's lifetime* and for any additional period provided by statute. Therefore, life owners generally have no right to grant possession to a tenant for a term that would extend beyond a life owner's lifetime unless a statute allows for an extended term.

The applicable Illinois statute (735 ILCS 5/9-206.1) provides some protection to farm tenants with year-to-year leases granted by life owners. Under this statute, year-to-year leases granted by life owners "... continue until the end of the current lease year in which the ... [life owner's] interest terminates unless otherwise provided in writing ...."

The statute also provides that the farm tenant is entitled to reasonable costs incurred in field preparation for the next crop year if the death of life owner occurs in the last six months of the lease year (e.g., life owner dies after August 31 and the year-to-year lease term is March 1 through February).

*Example 4: Death of a Life Owner – Applying the Special Illinois Statute.* Assume Surviving Spouse (the "life owner" in Example 3) leased Brownacre to Farm Tenant under an oral year-to-year lease, the first lease year beginning March 1, 2006. Farm Tenant plants corn and beans on Brownacre for the 2006 crop year and again for the 2007 crop year. Surviving Spouse dies on June 15, 2007. The life ownership of the spouse is extinguished; her children, A, B, and C, are now the fee simple co-owners of Brownacre under the terms of the will of her predeceased husband, the former fee simple owner.

Under the special Illinois statute:

- Farm Tenant's year-to-year lease of Brownacre remains effective *according to its terms* through the last day of February, 2008 (the lease does not terminate automatically on June 15, 2007, because the life owner died on that day).
- Farm Tenant has no right to operate Brownacre as tenant for the next lease year, beginning March 1, 2008, unless A, B, and C grant Tenant a new lease for that lease year.

*If* life owner's death had occurred within the last six months of the lease year (e.g., sometime after Aug. 31, 2007, rather than on June 15) the statute would entitle Tenant to compensation from A, B, and C for the costs of work performed in the fall of 2007 in preparation for the 2008 crop year (assuming A, B, and C do not grant a new lease to Tenant).



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## Protecting the Tenant When Life Owner and Tenant Execute a Multi-year Written Lease

The special Illinois statute discussed above expressly applies to year-to-year farm leases, but the statute is silent about written multi-year farm leases. What if a life owner and farm tenant want to execute a multi-year farm lease, e.g., a lease for a term of three years? How can the tenant be protected from the early termination of the multi-year lease if the life owner dies before the multi-year term expires?

One approach would be to have the written multi-year lease signed by the life owner and by the person or persons entitled to possession after the death of the life owner (or by a guardian of any person under 18).

*Example 5: Multi-year lease.* Surviving Spouse is the life owner of Brownacre. At Surviving Spouse's death, possession and control of Brownacre will pass to her children (A, B, and C) under the terms of the will of Surviving Spouse's predeceased husband. Tenant, Surviving Spouse, and her children (assume A, B, and C all are of legal age) sign a written lease granting Tenant the right to farm Brownacre for three years. Surviving Spouse, A, B, and C, *collectively*, have possession and control of Brownacre during Surviving Spouses' natural life *and* after her death. *Collectively*, they can grant possession and control of Brownacre to Farm Tenant for three years, regardless of when the life owner might die.

## Other Examples: Single Owners and Multiple Owners/Individuals or Entities.

Farmland may be owned by a single individual or entity, or the land may be co-owned by several individuals or entities. Examples of "entities" that could own farmland include trusts, estates, limited liability companies, partnerships, and corporations. Generally, this article has assumed that the landowner is one person. However, the discussion of the farm tenants' right to continue farming the land under the existing lease would usually be the same if the land were owned by an entity that "dissolved" (an entity's way of "dying") or were co-owned by more than one person or entity (all having signed the lease) and one of the co-owners died or became mentally incompetent.

## Analogous Situation: Sale of Leased Farmland

As a general rule, the sale of farmland subject to a lease does not, by itself, terminate the lease. The new owner acquires the farmland subject to the existing lease. However, owners who anticipate selling their farmland may include special provisions in the lease to limit the rights of the Farm Tenant if the farm were to be sold. For example, an owner might include in a written lease a provision that the lease will end *on the earlier of* (a) the last day of February of year three of the lease, or (b) December 31 of any calendar year when owner sells the land to another. Following sale, this lease would be effective *according to its terms*.

## Summary

This article has summarized the effect of the landowner's death on the right of a farm tenant to continue to operate the Illinois farm under an existing lease. As a general rule, the tenant's lease of farmland continues after the death of the landowner according to the terms agreed to by the landowner before death, even if it is a multi-year lease.

Also, this rule generally applies if the owner subsequently becomes mentally incompetent or sells the Illinois farm to another (assuming the lease, itself, does not limit the tenant's rights in such circumstances). Rents that would have been paid to the now deceased or incompetent landowner, or to the prior owner before the sale to a new owner, will be paid to an executor, guardian, or new owner.

Special rules apply where the landowner had a "life estate" in the farmland, rather than ownership in "fee simple". A special Illinois Statute protects the farm tenant in some situations, but for multi-year leases, getting additional signatures on the lease may be needed to protect the tenant.

Legal counsel can be very helpful to farm tenants in determining whether the farmland owner is a life owner or a fee simple owner, in crafting the lease to accommodate the particular circumstances involved, or in negotiating reasonable compensation for fall field work if the rented land is owned by a life owner who dies in the last six months of the lease year.

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