



New Model For Family Property

Friday, February 18, 2011 by [the Editors of Dow Jones Newswires](#)

By ARDEN DALE

Centuries-old rules on how ownership of property is divided among heirs have resulted in a lot of heartache over the years when a member of the clan goes astray. Now there is a push to change that situation.

Family co-ownership of a seaside cabin in Maine or a farm in Montana can turn troublesome if one member fails to pay taxes or do his fair share of upkeep. Problems may be small but nettlesome, such as who has rights to a favorite bedroom. Or they may be catastrophic, as when a stranger with an ownership stake demands that the entire property be sold.

Often causing these problems are so-called tenancy-in-common laws, which differ from state to state. They can affect family ownership rules whether or not there is a will and, while often associated with poorer families, can involve the wealthy as well.

The American Bar Association, after decades of stories about families forced to sell long-held property at fire-sale prices in public auctions, this week approved a model law called the Uniform Partition of Heirs Property Act. It hopes states will adopt the model to produce more fair outcomes.

Thomas Mitchell, an associate professor at the University of Wisconsin Law School, is the primary drafter of the new model, in his work on behalf of the National Conference of Commissioners on Uniform State Laws. He says he regularly hears from people on co-ownership issues, among them "folks who have gone to Yale, or work on Wall Street."

States won't be required to use the new model; their own politics will determine which do and don't. But they often adopt acts authored by the Uniform Laws group. Maine is likely to be among the first to move.

Greg D. Peterson, an attorney at Boston law firm Tarlow, Breed, Hart & Rodgers P.C., said adoption of the model is needed. Even with a will or trust, property can end up with many owners with their own separate stakes. That puts it at risk of an auction sale in an action known as "partition" by, say, a speculator who has bought a stake from a poor relative.

The new standards would require that co-owners have a chance to buy out the interest of the interloper, or the unhappy family member who wants out. If the property is sold, it must be listed by a broker and sold at market value.

Right now, many sales are at auction and disaster scenarios are "more common than you would think," Peterson said. They sometimes happen on urban fringes where land is being snatched up and developed, and where "land pirates" may research a family tree to see who owns property.

Hugh C. Macgill, a professor at the University of Connecticut School of Law, in a letter to lawyers working on the new standards, wrote to describe the problem his wife's family has had with a 350-acre salt-water farm in Maine it has shared since the 1790s.

There was no will for five generations, and the co-tenancy that results "is probably the most unstable and vulnerable form of ownership known to the common law," Macgill wrote.

A solution for some families in the past 10 years or so has been to put property into a family limited partnership or limited liability partnership, structures that emerged in the 1980s and 1990s.

For others, that hasn't been an option. Ownership of property in the part of Maine where the salt-water farm lies, for example, is "so complex and uncertain that rational management, such as formation of an LLC, is practically impossible," said Macgill.

There, people have a term for that kind of ownership, he said. They call it "heir-locked."

Arden Dale is a Dow Jones columnist who writes about tax and estate planning. Her columns are available to [Dow Jones Adviser subscribers](#).