

AG. HOMESTEAD PROPOSAL: LINKING OF SPOUSAL TRUSTS

MSBA Greater Minnesota Study Group, Ag Homestead Committee

Background:

The current statutes do not allow properties held by separate trusts to be linked for ag homestead classification purposes, nor do they allow a surviving spouse who is a beneficiary of a credit shelter trust to link his/her individually owned property with the property held in the trust. Additionally, only a grantor of a trust is eligible to claim a special ag homestead under section 273.124 subd. 14(b) (that is, when the grantor or spouse lives in town and does not occupy the homestead, but actively farms the ag property or has a family member who does so). The result is that spouses may be denied ag homestead classification on farmland held in their separate revocable trusts or in a credit shelter trust after the death of the first spouse, which is causing significant property tax and estate tax (qualified farm property deduction is contingent on homestead status) consequences for farmers.

Our proposal:

The revisions we are proposing would allow spouses to link property held in their separate revocable trusts for ag homestead purposes, and would also allow individuals to link their individually owned property to property held by their own trusts or their spouse's trusts. We are also expanding eligibility for special ag homestead to allow it to be claimed by the surviving spouse of the grantor of a trust. Our ultimate goal is allow spouses to benefit from ag homestead classification on their farm property (whether it is contiguous to or noncontiguous to the base homestead parcel) irrespective of whether they choose to keep title to the property in their individual names or put it in a trust for estate planning purposes. The proposed revisions are intended to align homestead classification for trust property with that afforded individuals, at least to the extent one of the spouses was the grantor of the trust.

As you can see from the attached language, we have clarified subdivision 21 of section 273.124 by including the term "agricultural land", a term used in section 273.13 to permit individuals to link ag land that is contiguous to their homestead. It is in new subparagraph (f) where we clarify the linking of parcels as described above between trusts or between an individual and a trust -- or any combination of the individual, the individual's spouse or deceased spouse. Subparagraph (g) relates to "noncontiguous" parcels and uses the same language as used for individuals owning farm land as set forth in section 273.124, subd. 14(c). Subparagraph (e) is the 'special ag homestead' provision explained above - and is comparable to subdivision 14(b) in 273.124 for individuals. Our proposed legislation strikes the current language in 14(b) and includes it as (e) in subdivision 21. We believe having all of the ag homestead language relating to trusts in subdivision 21 makes it more readable and comprehensible.

Use of Trusts in Farm Estate Planning:

If the intent of the legislature in passing the Corporate Farm Act and the Qualified Small Business Property and Qualified Farm Property Deduction was or is to provide some protections to encourage continuation of “family farms”, it is counterproductive and misleading to eliminate such family’s real estate homestead status and ability to qualify for the deduction, if they use standard trust ownership and planning to accomplish the passing of the family farm to the next generation. The same trust planning has been used to facilitate the transfers of farm properties to their families in an orderly manner well before the passing of the Corporate Farm Act and the Qualified Small Business Property and Qualified Farm Property Deduction. Historically, trust ownership helps “hold the farm together for a period of time” for management purposes, income flow to a surviving spouse until the death of the surviving spouse, management for the benefit of young or inexperienced family beneficiaries, etc. It seems counter intuitive that the legislature intended to take away trust planning as a tool for passing on the family farm when they decided to protect such farming operations from large outside corporations and allow an estate tax deduction closer to the federal deduction to keep the farm a viable economic unit upon its transfer to the next generation.

Summary provided by: MSBA Greater Minnesota Study Group, Ag Homestead Committee
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