

# Agricultural Law Digest

An Agricultural Law Press Publication

Volume 4, No. 10

May 14, 1993

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ISSN 1051-2780

## DIVIDING CROP ALLOTMENTS, QUOTAS AND BASES

— by Neil E. Harl\*

The task of dividing crop bases, quotas and allotments when farms are divided and transferred is a significant and often an important part of the property transaction.<sup>1</sup> The division of bases, quotas and allotments is governed by statute<sup>2</sup> and regulation.<sup>3</sup> Ideally, the rules should be reviewed before final agreement is reached on land transfer and before a contract is executed if there are bases, quotas and allotments involved that are economically important.

### Statutory guidance

The statute specifies that in any case in which the ownership of a parcel of land is transferred from a larger tract, the acreage allotments, base acreages and cropping history are to be divided between the two tracts in the same proportion that the cropland acreage in each parcel bears to the cropland acreage in the entire farm.<sup>4</sup> However, the statute states that regulations are to prescribe the method to be used in dividing allotments, histories and crop bases where —

- eminent domain is involved;
- the tract of land transferred is to be used for non-agricultural purposes;
- the parent farm resulted from a combination of two or more tracts of land and records are available showing the contribution of each tract to the allotments, histories and crop bases of the parent farm;
- the county ASC committee determines that a division based upon cropland proportions would result in allotments and bases not representative of the operations normally carried out on any transferred tract during the base period;
- the parent farm is divided among the heirs in an estate settlement; or
- neither the tract transferred from the parent farm nor the remaining portion of the parent farm receives allotments in excess of allotments for similar farms in the community and the allotments are consistent with good land use (but this latter provision does not apply in the case of burley tobacco).<sup>5</sup>

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### Methods available

The regulations have identified several methods for dividing allotments, quotas and crop bases.<sup>6</sup>

**Estate method.** Under the estate method, the division among the heirs can be made by will<sup>7</sup> or by written agreement of the heirs or devisees.<sup>8</sup>

**Designation by landowner.** Under this method, the transferring owner may request that the county ASC committee make the division *in a manner designated by the landowner*.<sup>9</sup> The transferring owner and the transferee are to file a signed written memorandum of understanding (see sample below) of the designation with the county committee.<sup>10</sup> A statement in the contract of sale is not alone sufficient. Both the transferred parcel and the retained tract must receive or retain, as the case may be, allotments, quotas and bases consistent with similar farms in the same area.<sup>11</sup> The parties must identify comparable tracts for both the transferred parcel and the parcel retained by the transferor.

In general, this method cannot be used if the land had been owned for less than three years unless the primary purpose of the transfer is other than to retain or sell quotas, allotments or bases.<sup>12</sup> Likewise, this method cannot be used if the transfer is to a federal or state agency by eminent domain.<sup>13</sup>

In general, this is the method most likely to be used when larger tracts are divided and gives the parties the greatest degree of influence over the division of allotments, quotas and bases.

**Contribution method.** This method involves the proration of the parent farm's allotments, quotas and bases in relation to the contributions at the time the tracts were combined (within the past six years).<sup>14</sup>

**Contribution-cropland method.** With this method, allotments, quotas and bases to the tract being separated from the parent farm must be in the same proportion that the cropland for each tract bears to the cropland for the parent farm.<sup>15</sup>

**Contribution-history method.** Under this approach, the allotments, quotas and bases are divided on the basis of the acreage determined to be representative of the operations normally carried out on each tract during a base

period.<sup>16</sup> Written consent of all interested owners is required for this method.<sup>17</sup>

The regulations authorize an increase or decrease in allotment, quota or base by as much as 10 percent if the owners agree in writing and the county committee determines that the method used did not produce an equitable division.<sup>18</sup>

**FOOTNOTES**

- 1 See generally 11 Harl, **Agricultural Law** ch. 91 (1993); Harl, **Agricultural Law Manual** § 10.03 (1993).
- 2 7 U.S.C. § 1379 (1988).
- 3 7 C.F.R. § 719.8 (1993).
- 4 7 U.S.C. § 1379(a) (1988).
- 5 *Id.*
- 6 7 C.F.R. § 719.8(a) (1993).
- 7 7 C.F.R. § 719.8(a)(1) (1993).
- 8 7 C.F.R. § 719.8(a)(2) (1993).
- 9 7 C.F.R. § 719.8(c) (1993). See sample request form below.  
Note that enforcement of the division of a quota *between the parties* depends on state law. See *KcKim v. Kauffman*, 424 S.E.2d 11 (Ga. Ct. App. 1992) (failure of farm seller to sign transfer of peanut quota to buyer was breach of contract; court had jurisdiction because A.S.C.S. refusal to transfer quota based solely on breach of contract between buyer and seller).
- 10 *Id.*, § 719.8(c)(4)(i). A sample memorandum of understanding is provided below.
- 11 *Id.*, § 719.8(c)(4)(iii).
- 12 *Id.*, § 719.8(c)(4) (iv).
- 13 *Id.*, § 719.8(c)(5).
- 14 *Id.*, § 719.8(d).
- 15 7 C.F.R. § 719.8(f).
- 16 *Id.*, § 719.8(g).
- 17 *Id.*, § 719.8(g)(2).
- 18 *Id.*, § 719.8(h).

**Memorandum of Understanding**

On this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, the undersigned, \_\_\_\_\_ Seller and \_\_\_\_\_ Buyer, do hereby agree as follows:

1. The Buyer has agreed to purchase certain real property previously owned by Seller, in \_\_\_\_\_ Township, \_\_\_\_\_ County, \_\_\_\_\_, and more specifically described as \_\_\_\_\_, containing 80 acres more or less, said purchase having been previously agreed to in a certain contract between Seller and Buyer dated \_\_\_\_\_.
2. The Seller represents that Seller had owned the subject real property for more than three years.
3. The Seller and Buyer acknowledge that the subject real property has been farmed as part of a larger farming operation by Seller for many years.

4. The Seller represents that the subject real property and other real property owned and operated by Seller has been entered voluntarily into certain price and income support programs administered by the United States Department of Agriculture and that, as a result of such voluntary participation, said real property has been awarded an allotment or quota denominated as a "base" for purposes of \_\_\_\_\_ production.

5. The Seller and the Buyer acknowledge that a separate conveyance of the subject tract of \_\_\_\_\_ acres more or less requires a division of the base acreage for corn and oats as between the subject tract and other real property owned by Seller.

6. The Seller and the Buyer agree that the method of division of crop base known and referred to as the "Designation By Landowner" method provides an acceptable division of the base acreage for the crops involved.

7. The Seller and the Buyer agree that the crop history for the five year period of 1987, 1988, 1989, 1990 and 1991 represents a logical, fair and equitable guide for division of base acreages for the crops in question and reflects fairly decisions by the Seller during that time period as to the most appropriate land use for the subject tract and other real property then owned by Seller. **[This paragraph is not required]**

8. The Seller and the Buyer further agree that the approach hereinbefore outlined for the division of acreage bases for \_\_\_\_\_ produces an acreage base of \_\_\_\_\_ acres of \_\_\_\_\_ base for the \_\_\_\_\_ acre tract in question and \_\_\_\_\_ acres of \_\_\_\_\_; and that such figures be recommended to the Agricultural Stabilization and Conservation Committee for \_\_\_\_\_ County, \_\_\_\_\_, for approval. Signed at \_\_\_\_\_, \_\_\_\_\_, on the date first above written.

BUYER \_\_\_\_\_ SELLER \_\_\_\_\_

**Letter to ASCS County Committee**

\_\_\_\_\_, 19\_\_\_\_

ASCS Committee  
\_\_\_\_\_ County

Dear Committee Members:

Enclosed herewith please find a Memorandum of Understanding by and between \_\_\_\_\_, Seller, and \_\_\_\_\_, Buyer, pertaining to the conveyance under contract dated \_\_\_\_\_ of the tract of land described as \_\_\_\_\_.

As required by 2-CM Handbook, the Buyers do hereby identify the following tracts as believed to be comparable to the above described tract:

Farm No.	Farmland	Cropland Corn	Yield	Oats Yield
325	86	81.3	69.3	90 0 0
377	200	177.1	90.5	113 7.4 5.53
305	40	38.8	18.3	107 0 0

The above identified comparable tracts are either located adjacent to the subject tract (which is the case with farms no. 325 and 2377) or within one-quarter mile (as in the case of farm no. 305). Moreover, the soil type, topography, fertility level and past management practices are comparable for the subject tract and the comparable tracts.

As further required by 2-CM Handbook, the Buyers do hereby identify the following tracts as believed to be comparable to the real property retained by Seller:

Farm No.	Farmland	Cropland Corn	Yield	Oats Yield
2194	530	421.9	23.7	88 5.1 42
366	120	54.7	10.7	94 0 0
2265	380	289.4	59.2	95 19.2 44

The tracts identified as comparable represent the same general soil class and are similar in topography and fertility level to the real property retained by Seller.

A request is hereby made for approval by the County Committee of the crop acreage bases identified and explained in the enclosed Memorandum of Understanding.

Please advise if you have questions on the above.  
Sincerely,

Buyer

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**CASES, REGULATIONS AND STATUTES**

by Robert P. Achenbach, Jr.

**BANKRUPTCY**

**GENERAL**

**EXEMPTIONS-ALM § 13.03[4].**

ANNUITY. The debtor was a beneficiary of an annuity purchased by an insurance company in satisfaction of a personal injury judgment against the insurance company. The debtor claimed the annuity as exempt under Fla. Stat. § 222.14. A creditor objected to the exemption, arguing that the exemption should not be allowed for annuity payments of court judgments. In a certified question from the Eleventh Circuit Court of Appeals, the Florida Supreme

Court held that the annuity exemption applied to all annuities, including annuities used to satisfy court judgments. The exemption was allowed. **In re McCollam, 986 F.2d 436 (11th Cir. 1993).**

COURT AWARDS AND SETTLEMENTS. The debtor claimed payments from a structured wrongful death settlement as exempt under Va. Code § 34-28.1. The court held that the statute applied only to the proceeds of awards and settlements from personal injury actions, which did not include wrongful death actions. **In re Cassell, 151 B.R. 78 (Bankr. W.D. Va. 1993).**