



Connecticut Farm Risk Management and Crop Insurance Program

Managing Legal Risk

INTRODUCTION

THE LEGAL RISK ASSOCIATED WITH FARM OWNERSHIP IS EXTENSIVE AND INCLUDES THE POSSIBILITY OF BEING SUED, FINED OR PENALIZED FOR VIOLATING LAWS OR REGULATORY STANDARDS. ACCORDING TO THE USDA, THE LEGAL ISSUES LINKED WITH AGRICULTURE FALL INTO FOUR CATEGORIES: APPROPRIATE LEGAL BUSINESS STRUCTURE AND TAX AND ESTATE PLANNING, CONTRACTUAL AGREEMENTS, TORT LIABILITY, AND STATUTORY COMPLIANCE, INCLUDING ENVIRONMENTAL ISSUES.

Business Structure

Business structure is an important consideration as there are many ways a farm can be operated. Options include sole proprietorship, partnerships, limited partnerships, limited-liability companies, corporations, and a variety of trust arrangements. To determine what legal entity will work best for your farm operation, consult a legal professional.

Estate planning, the process of planning for what will happen to your farm when you are no longer in charge, is an obvious consideration in determining your business structure. It does not simply address what will happen after you are gone; it also deals with what happens while you are still here. When do you want to start turning the farm over to the next generation? How do you want to do it? Do you have a will that encompasses all aspects of the farm? Should you set up a trust? Answering these questions properly, carefully, and with a professional reduces your legal risk.

Contractual Agreements

A contract is a verbal or written agreement where parties exchange promises for mutual benefit. All contracts involve legal risk. There is the chance that a party will not carry out their promise, which is referred to as contractual nonperformance. To lessen this risk, make sure that your contract specifies consequences for not fulfilling contractual

obligations. On the other hand, if you are unable to meet financial obligations outlined in your contract, it may lead to foreclosure of your property or other financial ramifications.

Tort Liability

Tort liability refers to the risk of being sued by a customer, worker or visitor, for example if there is an accident due to improper safety procedures on the farm. This type of liability is normally insured under a general liability insurance policy. Within the past decade, tort liability has increased significantly.

Statutory Compliance

Farmers are subject to a wide range of statutory mandates. According to the USDA, these include: tax reporting and payment obligations; wage, hour and safety requirements; compliance with nondiscrimination statutes; termination of employees; use of pesticides and herbicides; and participation in farm programs in addition to a variety of others. Consult with a legal professional to ensure that you are in compliance with all statutory mandates.

Environmental Issues

Environmental issues are extensive and complicated. In the past few decades, the number and nature of environmental regulations has rapidly increased. These regulations include pesticide application, air quality,

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water quality, and agricultural discharge issues to name a few.

It is important to be aware of the applicable federal, state, and local laws. You need to maintain detailed records of your actions in case you ever need to prove that you are in compliance with the law. Recently in Connecticut, more lawsuits have appeared on trial dockets that allege water pollution caused by agricultural runoff. This runoff might include excess pesticides that are washed into nearby waterways

during storms and manure that becomes part of storm water runoff and causes fecal coliform levels to spike. There also have been complaints by farm neighbors in regards to noxious smells.

Lawyers and judges are taking environmental issues much more seriously now because they have, in some cases, become high profile public issues. Consult a professional to ensure that you are in compliance with all laws and regulations.



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