

**Farm Law 101
Pilot Network**

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I. Introduction

FLAG and the purposes of the training.

There are five main topic areas: (1) contracts; (2) debtor creditor law; (3) liability, legal entities, and insurance; (4) government regulation and agriculture; (5) discrimination. We will talk very briefly about employment law. There are many important topics we will not cover.

Questions welcome.

These materials will be expanded as the Pilot Network develops.

II. Legal Issues, State, and Federal Law

General, mainly not state-specific, although state laws are quite similar and growing somewhat more so over the years. Some federal law.

III. Contracts

What is a contract? Issues of when and how contracts should be or must be in writing. Leases as contracts. Lessor is the tenant. Lessee is the landlord. Production contracts versus marketing contracts. Defining "parties," "legally enforceable," and "default."

Getting contracts in writing. How much? When? When payment? Land, lending money, sales, leases.

IV. Types of Property

Importance of difference between personal property and real property.

V. Debtor- Creditor Law

Centrality of lending for farmers. Very roughly three different types of loans farmers use. The differences depend largely on the collateral for the loan and for the way the lender can collect on the loan. Debtor is the person that borrows. Creditor is the one who lends the money or is owed the money. Lawyers call what creditors can do to collect on debts a "legal remedy."

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A. Collateral

Why is it important? Additional credit, “conversion.” Knowing the collateral.

B. Unsecured Debt

Loans without collateral. Creditors use judgments to collect on debts. Credit cards are a good example.

C. Debt Secured by Personal Property

For farmers, very commonly used to buy equipment, farm inputs of all types, livestock, leases of land. Quick repossessions are possible. They may not, usually, “breach the peace.”

D. Real Estate Loans

Loans involving real estate. There are two main types of real estate loan transactions: mortgages and contracts for deed. Contracts for deed are sometimes called installment loans.

Both have specific rules. Contracts for deed are common in agriculture and can carry special risks.

Foreclosure on a mortgage always has a legal process. Cancellation of contracts for deed always has a specific set of rules.

E. When Things Go Wrong: Legal Process Important

If a farmer gets behind on payments or is otherwise in default on a loan, a legal process will always govern the actions of the creditor.

(1) Never, Ever Ignore Bad News

Open the mail, respond to even the worst news. Legally, not responding is the worst possible response.

(2) Getting Help

A farm advocate, if available, can be helpful. A lawyer may be needed. Mental health resources are available.

(3) Bankruptcy in the Background

In some cases, bankruptcy can be a helpful option. A lawyer is almost always needed for a successful bankruptcy. The best candidates for bankruptcy are those with significant “unsecured” or “under-secured” credit but who still have equity in the farm. Bankruptcy raises social and moral issues. Bankruptcy should be planned, if possible, but it is possible to make mistakes when doing so. Always be completely truthful in bankruptcy proceedings.

F. Farm Service Agency and Farm Credit System

If the lender for a loan is USDA's Farm Service Agency (FSA) debtor-creditor rules can be different and generally more favorable to the borrower. These rules are applied across the country. If the lender is guaranteed by FSA rules are somewhat different. Similarly, if the lender is a Farm Credit System Institution, rules can be somewhat different.

VI. Legal Liability

There are several types of legal liability that are of special importance for farmers.

A. Premises Liability

When someone gets hurt on your property. The law is very state-specific. Yes, in many cases trespassers can sue if they are hurt on a farmer's property. Yes, putting up no trespassing signs may be helpful but it should never be the full answer. Similarly, posting that those visiting the farm are at their own risk is fine, but should never be the full answer.

B. Sales of Food and Liability

Someone gets sick. Historically, farmers have not often been sued in this way. Direct marketing increases the risk.

C. Debtor-Creditor

Someone collects a debt.

D. So Many Others

Pesticide drift, etc. Plus the broad world of litigious America.

VII. Legal Entities and Risk

Most farms are not legal entities such as corporations, limited liability corporations, etc.

A. Creating Legal Entities

There are many reasons to create legal entities. Most farms do not.

For larger scale operations, there can be tax and other advantages to a legal entity. For modestly-sized farms, an entity will not change the day to day financial circumstances of the farm in a significant way.

Registering the name, in general, does not require a legal entity – very state specific.

A USDA farm number is different from creating a legal entity, has its own logic and set of rules.

Many, many resources that are state specific on why to form one and how.

B. Entities to Manage Legal Risk

Legal entities can be helpful in some cases for legal risk – but this advantage is often greatly exaggerated. It will likely not help in farmer debtor-creditor interactions. Lenders will want farmers to be personally liable for loans.

C. Picking and Creating an Entity

There are a wide variety of entities available. Rules for them vary by state. Creation of an entity affects how farms pay federal income tax and likely state income tax – if the state has it.

There are many resources available to help choose and create an entity. The state Department of Commerce (or something similar) will likely provide good resources.

Many lawyers will also be happy to create an entity for the farmer.

D. Entities May Not Help Much for Legal Risk

For premises liability and for sales of food, an entity may not be much help. In a true legal crisis – where potential liability is a threat to the farm – entities may have almost no protection.

VIII. Insurance and Risk

For premises liability and liability selling food, insurance is an essential and should be treated as a cost of doing business.

A. What Insurance Does

The insurance company will defend against a lawsuit. It will also pay for liability if the liability is covered in the policy.

Always be direct and honest with the insurance company about the activities being covered.

In most states insurance companies face repercussions if they refuse to assist you in bad faith.

B. Insurance and Legal Risk

Standard premises liability is available for farms. It likely does not cover sales of food, but insurance for this purpose is available. Many farmers markets will require it. For these types of legal risk, insurance should be considered essential to the farm.

Insurance does not protect the farmer from debtor-creditor liability.

C. Federal Crop Insurance is Different

Federal Crop Insurance addresses completely separate risks. Almost all farmers should consider crop insurance. For diversified operations, it may not be practical, but in general, it is important to remember that most of the cost of federal crop insurance is paid by the government. It is also very standard in the rules of the policies.

IX. Hiring Employees

Most farms do not hire employees. If a farmer does hire an employee many issues need to be considered. There is a long tradition of informal dealing when it comes to farm work – in the form of various forms of mutual aid, bartering, trading time and tasks, and so forth. In general, there is nothing wrong or illegal about these sometimes essential aspects of farming culture and exchange. In the current era, however, hiring farm labor can create significant responsibilities for the farmer.

A. Some Responsibilities Vary Greatly from State to State

Some legal responsibilities for employers are controlled by federal law (such as payroll taxes), but many are state-based. Responsibilities can vary by state.

B. Special Rules for Farmers

In some cases, there are special rules for farms that have employees and some exemptions for smaller scale farms. These are important to understand.

C. A Short List of Possible Issues

Possible issues include the following.

- (1) Workers Compensation
- (2) Unemployment Insurance
- (3) Minimum Wage
- (4) Payroll Taxes
- (5) Who is a Contractor -- 1099?

X. Discrimination is Illegal

In lending and other business matters, it is illegal to treat people differently based on their race, sex, national origin, etc.

XI. Government Regulation

Various forms of government regulate agriculture. This can be confusing for regulation of land and for direct marketers.