

Chapter One – Introduction

Why the book was written

This book was written to help provide information to the thousands of farmland owners in Iowa and to answer many of the questions you might have in connection with owning and operating farmland. As you can see from the table of contents the range of issues is quite broad – stretching from very basic matters of fence law and drainage to more fundamental questions about the different ways interests in owning land can be divided, such as tenancy in common and leases. When we go get a driver's license the state gives us a book of rules to read and makes us take a test to prove we understand the responsibilities and obligations of being a driver. But when we buy a farm and inherit land from our parents it does not come with a book of rules or list of things we need to know and there is no test to take. We may not need a test to become a landowner but this book helps provide information and answers many landowners seek – the information to help us all understand the legal rights and obligations we have as landowners.

Who is the audience

The book was written for the benefit of anyone who now owns land, thinks they might own or inherit land in the future, or who is involved in providing advice to people who are landowners. It is especially designed to provide information to people who are new landowners – the sons and daughters who are now or will soon be inheriting farmland from their parents. It is estimated over one half of the nearly 30 million acres of Iowa farmland will change hands in the next two decades. This means thousands of people may soon find themselves in the position of owning a piece of rich Iowa farmland. The land is a valuable economic asset but it is also often a legacy of a family's long history in Iowa agriculture meaning it has very powerful sentimental value. Collectively our farmland is an invaluable part of Iowa's wealth, of our heritage, and of our economic and social future. Land is owned by individuals but it also has a social and public dimension, making it important for all of us to understand the legal rights and responsibilities we share as landowners.

What you will find

The book is organized around a set of important issues or themes related to landownership – such as fence law, drainage, farm leases, resolving property disputes, and complying with laws related to critical issues like soil conservation. While it is impossible to cover every possible legal question that might arise for Iowa landowners, I have tried to be comprehensive in the coverage and include information about a wide range of issues of potential value to readers. The book is written in part using a question and answer format – in which the topic – such as fence law or boundary issues are discussed by answering common questions raised by landowners encountered the issues.

The book focuses on legal issues but it is written for non-lawyers. I have made a special effort to take legal concepts and present them directly so they are easier to

understand. I believe it is important to take the mystery out of law. The law works best when the individuals subject to its application can understand and know what it means for their possible actions. Many of the legal issues discussed throughout the book involve special terminology or words with special legal meanings. When you encounter words of concepts you are not familiar with hopefully the meaning may become clear in the context but to assist you in understanding legal terminology a Glossary of over 200 important legal terms appears at end.

How to best use the Legal Guide

The best way to put the book to use is to read through it and think about how the different topics relate to your own land situation. If you are a landlord and have questions about farm leasing then Chapter Ten will be of interest to you. If you have inherited farmland and are interested in making sure the soil is being conserved then Chapter Eight will be of interest. By reading through the whole book you may well discover issues you have not thought about and you will learn important concepts of Iowa property law.

Another way to use the book is to consider the specific questions you might be facing. For example, perhaps you own land with your siblings – typically you may have what is known as an “undivided interest” as “tenants in common” with them. You will find a series of questions dealing with “tenancy in common” in Chapter Fourteen on Families and the Land. For example, the chapter addresses what can happen when tenants in common can’t agree on what to do with the land. Here is a hint - Iowa law requires unanimity for action - and provides if co-tenants can’t agree they can ultimately ask the court to “partition” or divide the land.

What the book doesn’t do

The book is not designed to provide you with individual legal advice – that is why the disclaimer in the front warns you not to rely on this book as a substitute for getting your own legal advice. Instead the purpose of the book is to help educate you to understand when you need to consult an attorney and the issues you should discuss and questions to ask them. The book is not designed to help you plan your estate or create a succession plan for your farm business. Both of these steps are very important ones for any person especially if you own land and have a farm you want to see continue with your children and future generations. Planning your estate and developing a succession plan for your farm are personal, complicated and very fact specific actions you should undertake after consulting with your attorney, family members and other advisors. These are beyond the scope of this book but there are good resources listed in the Appendix to help you get started. The book is also not designed to help you complete your income taxes or to settle an estate or probate proceeding. Again, these are very fact specific actions that need the input of trained legal and financial professionals. You may think you can save money by avoiding seeing an attorney for legal advice – but my experience is this can be an expensive path to disappointment and regret.

Why Land Owning and Property Law Are Familiar to Most Farm People

Most people who own land and who will read this book may already have a solid basic understanding of many of the laws relating to real property. There are three reasons land tenure issues and property law are familiar to most people, especially if you are involved with farming or grew up on a farm. First, by the time most people reach adulthood they have more experience with property law than they may realize. Consider these common experiences: a) renting an apartment or place to live while in college and beginning a career, b) using a mortgage to help finance buying a first home, and c) inheriting property from a parent or relative. Personal involvement with these common property transactions means many people are familiar with legal terminology and the processes involved in the sale, use, and transfer of land. Second, most people involved with farming or who grew up on a farm either own farmland or have some expectation of inheriting some interest in farmland from parents or other relatives. Third, when I have conversations about land tenure and family disputes over farmland, the discussions almost invariably result in another party saying something like - “let me tell you about what happened in my family.” From my experience it seems almost everyone involved with farming and the passing farmland to others has an experience – often involving family conflicts or difficulties – concerning how a farm sale, estate plan, or other land related transaction caused grief and conflict between members of the family.

The result of these common experiences means most people grasp what is involved when you speak about “land tenure.” It also means people can draw on their own experiences in understanding discussions about how property law works and why conflicts can arise within families over land transfers.

My Personal Experience with Farmland Transactions

In writing this book I reflected on my own personal experiences with farmland transactions and was surprised to discover the range and diversity of transactions I have been involved with over the years. This leads me to believe many people have more experience with real estate than they realize - but it also raises the possibility we can be over confident about how well we understand how things work. The following are a list of my farmland related property transactions and the various legal roles resulting:

1. Purchased land on an installment contract – vendee
2. Sold land on an installment contract – vendor
3. Purchased land, borrowing money, creating a mortgage – mortgagor
4. Sold land for payment (buyer got a loan on a mortgage) – seller
5. Leased farmland orally – landlord
6. Leased farmland in writing – landlord
7. Rented farmland orally – tenant
8. Rented farmland on a written lease – tenant
9. Signed USDA contract to put land into CRP - contractor
10. Inherited farmland from parent – devisee
11. Donated land to a public body, a county conservation board – donor

12. Created a conservation easement on land with a land trust – grantor
13. Used a power of attorney to sell land for another – POA
14. Made a planned gift of land in a will – deviser
15. Gave a deed on a portion of land under a contract - seller
16. Surveyed and divided land to sell a portion – subdivider
17. Granted a utility easement across my property - grantor
18. Sold land to an established farmer - seller
19. Sold land to a beginning farmer on contract – financier
20. Own a farm under threat of annexation – owner

In addition to these personal experiences with land transfers, I have taught Agricultural Law classes for over 35 years at Drake University Law School and been the director of the Agricultural Law Center during this time. Many of my classes, articles and other projects have involved land related issues – including work we have done at the Center on land tenure in partnership with the Leopold Center for Sustainable Agriculture at Iowa State University. For over 25 years it has been my honor to serve on the board of the Iowa Natural Heritage Foundation, the state’s leading private land trust. In 35 years the INHF has permanently protected over 180,000 acres of Iowa land – including Hamilton Prairie in Adams County. I don’t claim to know everything about Iowa law relating to farmland – but time has given me the opportunity to encounter quite a bit of it! These experiences shape this book.

A Comment of the Critical Role of Women Landowners in Iowa

Women have always played an essential role in Iowa agriculture as mothers, wives, and as farmers. Perhaps even more importantly, studies show women own over half of Iowa’s farmland making them the decision makers as to how the land is used and who will be its future owners. Even with this critical role of women in Iowa agriculture, it is important to acknowledge many people - from politicians to legislators and from business owners to educators - traditionally view agriculture and farming as male dominated – with farmers as men and with fathers or husbands being the landowners and the decision makers. In recent decades, women have claimed a larger role in business, politics, and society – and traditional male-dominated views of farming have begun to change. But the idea the men are in control can still present challenges in how people think about agriculture and how we communicate around key issues. Given the important reality of women as landowners - no doubt many of you reading bear this out – it is important to think about how issues of gender may be revealed in connection with owning farmland. Here are ten important issues or ideas I believe we need to consider.

1. The role of women as farm landowners will continue to increase not just as women obtain more equal status in the farm business, but also because women typically outlive husbands and daughters of farm families inherit land from their parents. This means legal advisors, educators and government programs must recognize women as landowners and tailor information and programs in ways to fit their needs and interests.

2. The creation and growth of organizations such as Women Food & Ag Network (WFAN) and Iowa Women in Agriculture (IWIA) are playing important roles in creating educational materials, conferences and workshops specially designed to address the concerns and needs of women landowners and farmers.
3. Obtaining accurate and helpful information is the key to being able to make good decisions. One reason I wrote this book was to put useful information in one place so landowners of all types can use it to answer questions and make informed choices and decisions - and hopefully avoid a few headaches.
4. Asking questions and communicating are important to understanding your role and opportunities as a landowner. People involved with owning land and farming may assume they know all there is to know, but if you have questions or concerns, the key is to ask questions. By communicating with those around you, whether a spouse, a child, a tenant or service provider, you can be sure people are aware of your ideas and desires. They might not agree with you, but they won't be confused as to what you think.
5. Remember, if you are the landowner then you have the power and right to make decisions and act. Over my years as a professor, I have often received calls from women landowners that go like this: "My sister and I have inherited a farm from our parents and we have some concerns with how the tenant is farming the land. It is okay if we tell him how we want the land to be farmed?" My answer always is, "of course, as the owners you are entitled to determine how the land will be farmed and by who!" But the reality may be – this is easier than it sounds. The male farm tenant may be used to getting his way and finding the courage to confront this sense of entitlement may not be easy. But the key to remember is if you own it, you are in the driver's seat – you can always look for a new tenant or change the terms of a lease.
6. Recognizing the historic gender imbalance in agriculture is really at the heart of these calls. The farmer may think he knows best and he may well know more about growing crops or government programs than the woman owner do. But the owner ultimately gets to decide how the land should be farmed and if the tenant doesn't agree, he may soon be looking for a new farm. Respect is a two-way street, but land ownership and relations such as tenancy are not relations between equals. If you are the owner, you have both the right to decide important issues, and you have an obligation to yourself and whoever entrusted you with the land.
7. The historic dominance of men in agriculture doesn't necessarily mean within families and marriages woman has been treated unfairly or not given an equal voice. We all know the family dynamics and roles we create, but the key is not to be bullied or buffaloed by someone trying to take advantage of you. Many provisions of the law, such as the protection of wives in divorce or probate (Iowa law does not allow a wife's interest in land be ignored), and laws to prevent elder abuse are to help insure people are not mistreated either physically or financially.
8. If you have definite ideas for how your land should be farmed, about who should have the opportunity to buy it, or whom you plan to leave it to – you have the power to make it happen. The decisions you make and how they are communicated through the terms of your lease, the provisions of your will, or the

- donation of land for preservation will mark your ownership on the face of the land. Taking control of these acts is an important part of being the landowner.
9. In order to help you achieve your goals for the property, it is important to share them with your family members and others who might be affected. By doing so, you can learn their thoughts and reactions, and you may also reduce any confusion or misunderstandings about what you intend to do and why.
 10. To help you develop and carryout decisions about using your land, you can rely on other professionals and advisors. You should work with an attorney to develop your lease or estate plan. You might decide to work with a farm manager to help lease or manage your land. In these situations, you are paying for the services and these people owe you a legal duty to carry out your wishes and to look after your interests. Of course, you can also rely on other people you know and trust - perhaps a long-term farm tenant or neighbor and of course, family members.

Introduction on Law

This book is about the law but is written for readers who are not lawyers – this is probably your situation. So it is helpful to provide you with a brief explanation of the different types or sources of law you might commonly encounter. This should help you understand how laws come into existence, how they may vary in their legal weight or authority, and how they might be changed. The following lists the type of laws in descending order as to their legal importance or authority.

First are provisions found in the Constitution – both federal and state – which set out the foundational principles of law – such as protection for private property and the creation and empowering of the General Assembly to enact legislation for the Iowa Code. The Constitution is very stable and the process to amend it is very lengthy.

Second are federal laws, referred to as statute, enacted by Congress and applicable to all U.S. citizens, to all the states, and to all activities happening within the nation. Some federal laws such as the Clean Water Act, the federal income and estate tax laws, or the farm bills can be very important for those involved in agriculture and for landowners. When it comes to issues of property law, this is considered a matter of state law, and the number of federal laws directly relating to property ownership are quite limited.

Third are state laws referred to as statutes or legislation enacted by the General Assembly and placed in the State Code. Laws such as on fencing, terminating farm tenancies, and soil conservation are found here. Each year the General Assembly or legislature meets and it can enact new laws or amend or repeal existing ones.

Fourth are the court decisions interpreting the meaning of legislation enacted by the General Assembly or provisions in the Iowa Constitution. Courts also decide legal issues for which no legislation exists, but where society needs legal rules to guide the conduct of individuals. The legal rules established in individual court decisions are referred to as the common law. Historically courts rather than legislatures created most of society’s legal rules. Most of the “common law” or basic rules relating to contracts, property, and torts

– injuries between people – have their origin in judicial rulings, for example the issue of whether a tenant has a duty to care for the landlord’s property is largely a function of the common law.

Fifth are administrative rules, the regulations developed by state and federal agencies to implement the legislation enacted on a topic. For example, the Iowa law concerning the right to withdraw and use water only works due to rules setting out the process for obtaining and using these rights. The Iowa Department of Natural Resources enacted rules found in the Iowa Administrative Code for this purpose. Some of these rules - for example the federal rules developed to implement a government program, such as the USDA Conservation Reserve Program (CRP) may require a participating landowner to sign a contract – agreeing to follow the rules – in order to participate.

Sixth are laws and ordinances, enacted by local governmental bodies. Actions, such as the county board of supervisors setting property tax rates, or the city council enacting a zoning ordinance are good examples. These actions create “laws” applying to people or property within the jurisdiction of the governmental body taking action. One important question is how the local government obtained the power to create the law. For some subjects, state legislation delegates the power. For example, Iowa’s law on county zoning Chapter 335 authorizes counties to enact such ordinances. But on other subjects where there is no state law, amendments to the Iowa Constitution provide for what is known as “home rule” giving counties and cities the power to enact their own legislation.

Seventh, a final and important form of law to consider can be seen as “private law” – the ability of individuals to enter into binding legal agreements – referred to as contracts. In exchange for some form of “consideration” - most commonly money, one party agrees to exchange something or perform some action. For example, the contract may involve selling or leasing a piece of ground, or agreeing to combine a crop. As long as the conduct being promised is not illegal and the parties are competent (and not minors) the law gives individuals wide leeway to create contracts, which operate as private laws binding the parties who enter the agreements. As noted above, binding agreements between two parties may also be used to implement public programs as well as private agreements. In either case, the important idea to remember is the written terms of the contract operate like “legislation” to guide the behavior of the parties to the agreement. If either party fails to follow the terms of the agreement – known as breaching the contract – the other party may choose to go to court to enforce it.

These are the seven most common forms of law and all are encountered in the book.