Chapter Three – Advice for Landowners and People Buying Land – Final 2017

In this chapter the discussions concern a range of issues you might encounter as a landowner or as someone planning on acquiring farmland. The topics discussed include such issues as: the basic ideas every landowner should know, common mistakes landowners can make, insurance and liability issues for landowners including Iowa's recreational use law protecting landowners who allow others to use their land, the process for registering the name of your farm, and Iowa's laws restricting the sale of land to some corporations and non-resident aliens. Lets begin with several simple checklists for landowners to consider.

Eight Things to Remember about Land Agreements

1. Written and signed contracts are binding and enforceable, even though the circumstances may have changed.

2. Contracts can always be renegotiated if the parties can agree, but any changes need to be in writing. Making changes in agreements becomes harder the more people involved or the more money at stake.

3. Freedom to contract and the beauty of the common law give you great latitude in crafting land interests – but some statutes – such as your spouse's interest in the land you own - can't be avoided.

4. Contracts or agreements involving real estate must be in writing to avoid the statute of frauds if they are for more than one year, although in very limited circumstances conduct can establish promissory estoppel or detrimental reliance.

5. The wishes or desires of the dead are not binding on the living unless somehow made enforceable in the title to the land, or unless the legal entity now owning the land, such as a trust, is bound by the desires of the person creating it.

6. People's circumstances may change over time as needs, obligations, health, finances and responsibilities change, so a landowner's desires may change too.

7. Monetary damages along are often not adequate in disputes involving ownership of land, that is why the courts can order "specific performance" to force the sale or transfer of promised piece of real estate.

8. It is common for different people to have different types of legal rights or interests in the same property, and for the ownership and use of land to be divided over time, such as through legal devices such as life estates, tenancy, and easements.

When it comes to real property and legal records, the most important county office is that of the county recorder. Under our system of real property law, all legal records as to land ownership and related interests in land are maintained at the local level. The county

recorders office is where various documents like deeds, land contracts, easements, fence agreements, etc., are file. It is where the land records, which are examined to create an "abstract", as discussed in Chapter Two are maintained. Iowa Code §331.601 and following sets out the authority for the county recorder, as well as the duties of the office, the fees to be collected, the type of records to be kept, and the method for filing and maintaining land records. If you have any questions about your land or the type of records existing for it, consider visiting the county recorder to learn more about what they do. You will find them friendly and helpful, especially if you are polite and courteous.

The Five Legal Documents Every Property Owner Should Keep on Hand

1. The deed to the land (and the abstract if you have paid for one).
2. The lease if one exists and it is in writing (as it should be!).
3. The USDA agreements, such as the Conservation Reserve Program (CRP) contract, or any cost sharing agreements with the Natural Resources Conservation Service (NRCS), and the AD-1026 form used by USDA to determine compliance with federal soil conservation rules.
4. Your will if you have one (and you should).
5. Any other legal agreements relating to the land, such as an agreement with neighbors about fencing and drainage, or a contract to allow manure to be spread on the land, or an easement for construction of a wind turbine.

Obtaining and having these documents available for review will make it easier for you to understand the legal issues relating to your land. In the future it will also make it easier for your heirs or anyone to whom you might sell or transfer the land to know what has been done in the past.

Twelve Legal Topics Every Landowner (new or existing) Should Understand

1. Fence law and when you must maintain partition fences
2. Drainage law and how it relates to tiling
3. USDA conservation programs, payments and costs sharing agreements
4. The USDA form AD-1026 for farm program participation
5. County property taxes and how they are assessed and collected
6. Land use requirements from applicable county or city zoning ordinances
7. Nuisance law as it relates to farming and agricultural areas
8. Other legal agreements impacting land, such as for manure disposal
9. Iowa's law on the landowner's duty to protect the soil from erosion
10. Trespassing law and the relation to posting and boundaries
11. Noxious weed rules and what must be done to contain them
12. Water law and how it relates to withdrawals and use of streams and ponds

As you might expect – all 12 of these topics are discussed in this book!

Twenty Common Mistakes Landowners Can Make

1. Thinking you know more than you do – and conversely not recognizing how much you already know about the law as it relates to land.

2. Assuming circumstances will never change, even though events like death, divorce, illness, and new children are natural and predictable.

3. Not recognizing how money can influence human behavior, even within families. Blood may be thicker than water but it isn't thicker than money.

4. Not asking enough questions to understand what is involved in a plan for a business, an estate, or a land transfer. Do not be reluctant to ask questions if you are considering entering into a legal relation. You never have more power in a negotiation than before you sign.

5. Not taking the advice of lawyers or others with expertise. A corollary is only seeking advice when the goal is reducing taxes rather than meeting other goals. You can't obtain the assistance you need unless you ask for it – so be honest and open with the information you share.

6. Not talking to a lawyer about legal issues – thinking you will save money. Trying to be your own attorney can be an expensive lesson.

7. Not reading a contract and understanding the effect of the terms in it. Do not assume the fine print – what lawyers refer to as the "boilerplate" – provisions of an agreement are not important. Every word in a contract has legal meaning and effect – and was included for a reason.

8. Assuming your actions will be accepted or excused even if they vary from you promised to do or what an agreement requires. The parties to an agreement can always voluntarily agree to change or waive the terms, for example many children have borrowed money from parents with every intention of paying it back, but never do with their parents approval. The fact parties can agree to waive or overlook a breach of an agreement does not mean they have to. In fact the starting point should be the opposite – if you agreed to it in writing then the other party can always try to have it enforced.

9. Trusting the other party will always do what they say or promise to do. Most legal relations are based on trust but human experience proves not everyone is trust worthy – and time and changing circumstances can impact the ability to do something you once in good faith intended.

10. Trying to represent yourself in a business or legal transaction – by being your own lawyer, realtor, farm manager or other advisor. There are reasons why these professions exist and you should consider when these services may be of value.

11. Assuming a plan or strategy to minimize tax liability will also achieve your other personal goals. People do many things to reduce or avoid paying taxes, but this doesn't mean the results will necessarily match what you or your family need. There are worse things than paying taxes – I should know as we are paying capital gains taxes on farmland I happily sold to a young beginning farmer!

12. Assuming your children will want what you do for the future and use of the land. As the landowner you get to decide how it will be transferred and to who – giving you have great latitude and control – but you can't control the future and what happens after you die. Many people operate on the assumption their land should always stay in the family – this may be possible but it may not be what your heirs and the future owners want or need.

13. Assuming you know what is best for your children and trying to control their future actions once you are gone, by using trusts and other devices to exert your "dead hand" control over their land.

14. Assuming you have to treat all of your children or heirs equally when you are deciding how to divide your estate. Treating people fairly may not mean you need to treat them equally, especially if they have varying needs or have made different contributions to you such as staying on the farm or caring for you.

15. Leaving important decisions to the next generation to work out rather than making your wishes known and acting on them. You may want to avoid taking actions you fear will result in hard feelings or conflict but this does not mean the conflicts won't happen once you are gone. The only difference is if you don't provide instructions on what you want to happen the parties will be left to fight it out themselves without your guidance.

16. Assuming your children will always get along and be able to agree on how the land should be used. This sentiment is often reflected by passing land to siblings as tenants in common. The effect is to yoke them together and may increase the likelihood for conflicts. Legally all tenants in common must agree before any action can be taken on the land – such as who will be the tenant or whether it will be placed in a USDA conservation program. The outcome of these conflicts may ultimately lead to a judicial proceeding to sell or "partition" the land, a process Iowa law makes available to any tenant in common.

17. Not having a will or succession plan for how your land and other assets will be distributed when you die, and if you do have such a plan, not communicating with your family and heirs so they understand your intentions and plans.

18. Not keeping your will or estate plan up to date to address changing needs or circumstances of your family members and possible heirs, and failing to keep good written records in a place where they can be found. Many court cases

involve will provisions written many years earlier but not reflecting the current relations or even desires of the testator (the person writing the will).

19. Assuming the truth won't come out eventually, such as about the money you have lent to a child, the failure to accurately account for the farm's income, or even who you plan to designate as your executor. Once you are gone, all the records and history of your farm business and land decisions will potentially be available for review by the parties and the court, certainly if your heirs come into conflict. The fact people will eventually know your plans does not mean you have to share them now but it is a factor to consider.

20. Waiting too late to challenge an action or speaking up when you believe something wrong or illegal has occurred. This is especially important when the delay may mean you miss a legal statute of limitations – the time you are given under the law to file a legal challenge to ask a court to review an action – such as in the probating of an estate or the transfer of a property by someone claiming the power of attorney for the owner.

Valuable Information if you Acquired Land Recently

I just inherited a tract of farmland and want to learn what type of legal agreements might be in existence concerning use of the property. Where should I start?

Great question and one with several levels of answers. First, from a property title perspective, the probate process involved the court ordering distribution of the property, meaning the deed that resulted and the associated abstract will detail the nature of your interest. Most likely, you obtained what is called a fee simple absolute – meaning you are the sole and complete owner. If you were only given the title for as long as your life and then it passes to an identified party – you have what is known as a life estate. If you obtained a shared interest with other siblings such as a joint tenancy or tenancy in common, then you have an undivided proportional interest. So, knowing what type of legal interest you have is key to understanding your rights to use and possible dispose of the property.

Are there other types of legal interest I should be aware of?

Yes, as noted in Chapter Two there can be a range of people who may have a possible interest in your property, either formal and informal. If the land is being farmed by a tenant then you are in a lease situation. If there is a written lease, you should obtain a copy of the lease and determine the length of the term provided. For most Iowa farm leases this is one year, but it could be longer. If it is for one year you need to know Iowa law automatically extends the lease for another year beginning March 1st – if notice is not given prior to the preceding September 1st, so you may have a tenant in place for next crop year – depending on when you obtained legal title. The tenant's right to farm the land for the years remains in place even if you decide to sell the land as soon as you own it. The operation of Iowa's law on farm leasing is discussed in detail in Chapter Ten.

The Iowa law requiring notice to terminate still applies even if there was no written lease but instead the lease us an oral agreement. In this case you will need to give notice by September 1st to change tenants or negotiate a new rental agreement. However, if the tenant otherwise agrees to the change or consents then notice will not be required.

Other examples of formal legal agreements affecting your property rights include:

- Easements, such as underground pipelines or overhead transmission lines

- Wind turbine agreements or easements, these may be obvious if they are on your property but beware if turbines are located nearby, your parents may have signed an agreement when the project was being assembled to protect wind rights on adjacent land.

- Easements with county for the road and the ditches. If your land borders a country road your title is to the center of the road but an easement was granted to the county when the road was built. The issue of who owns the road ditches is discussed in Chapter Seven.

- Fence agreements – it is possible your parents and a neighbor entered an agreement to record how they divided responsibility for maintaining the partition fences between them. Even if such an agreement is not recorded you might want to speak to the neighbor to see if any informal agreement or understanding exists – you will want to be aware of any agreement before any fencing work. The Iowa law on Fencing is discussed in the next chapter, Chapter Four.

- Drainage, a similar question can exist concerning drainage issues. In some situations if a court was involved – formal agreements determining the surface drainage rights of neighboring land owners have been created and recorded. There may also be informal agreements or understandings with neighbor about drainage --- so having a conversation with the neighbors might be a good idea. Fence and drainage disputes are not uncommon with dozens of recorded Iowa court cases and those can have serious impacts on neighborly relations. The Iowa laws on Drainage are discussed in detail in Chapter Five.

<u>You mentioned informal agreements – what do you mean? What's an example?</u>

The most common example of this type of property related "agreement" is the promise to let someone use the property, such as fish in the pond, hunt for deer or search for mushrooms. These types of use rights might be historic or customary for neighbors, family, former owners or friends – even though they are not in writing and probably not legally enforceable. But they can give rise to conflicts and disputes (and surprises!) especially when you discover someone else on your property. If they are doing something you had hoped to do such as collect morels or engaged in an activity you don't approve, such as hunting deer or trapping. It may be hard to deal with these issues since they are unrecorded but communicating the fact there is a new owner of the land, such as

by posting the property with no trespassing signs as provided for in the Iowa Code is a good start. Issues involving trespassing are discussed in Chapter Seven.

Are there any other legal agreements I should consider?

Yes, there are at least two other types of possible agreements that could impact your use of the land. One example is an easement to let others spread manure on the property. It is possible your parents signed a multi-year contract or easement with a nearby farm operator to allow your property to be used to dispose of animal wastes. The second example concerns agreements with USDA or the state for conservation program. These topics are discussed in Chapter Twelve about conservation programs. Be aware there are a variety of conservation programs contracts that might exist, such as:

- the CRP, involving 10-15 year agreements providing annual payments for not farming the land. These contracts include significant penalties such as repaying past payments if the contract is breached;
-the Conservation Stewardship Program (CSP), involving 5 year contracts to carry out certain soil conservation and water quality protection actions for annual payment.
- the Environmental Quality Incentives Program (EQIP), involving contracts for public cost sharing to install conservation practices such as terraces. These contracts include a maintenance agreement, requiring the practice not be changed for a certain period or useful life., or otherwise funds must be repaid. The same type of maintenance agreements exist with state cost sharing programs.
- the Wetland Reserve Program (WRP), involving the transfer of permanent easements in land to establish a wetland. The USDA holds a conservation easement to see the wetland is maintained and the landowner still own the residual fee interest, subject to the duty to continue the land as a wetland. Many farmland owners who have entered the WRP have transferred the residual fee interest – and the land to county conservation boards or land trusts lie the Iowa Natural Heritage Foundation, as discussed in Chapter Thirteen.

I found out the property I inherited is located within a drainage district – what effect does this have?

The answer to this question is found in Chapter Five. The most important thing to recognize is you are subject to decisions made by the trustees of the drainage district who have certain statutory rights concerning using your land for drainage purposes. These decisions might require you to provide money – through an assessment process - to improve or maintain existing drainage systems created by the district to serve your land.

Information about Insurance and Liability for Landowners

As a landowner what type of insurance do I need? When might I have liability to others?

As you know, buying insurance is a common feature of life. We buy it if we drive a car, for our health care, on our lives, and to protect our homes and businesses. The type of insurance you might need as a landowner will depend on what you are doing and how you are using the land. Much of the insurance we buy relates to buildings such as the home owners insurance we buy – in part because our mortgage lenders requires it to protect their investment if our home is damaged. Other insurance may relate to the business activities we conduct on the land, such as a comprehensive farm liability policy to cover accidents and injuries or even crop insurance you buy to protect farm income.

If you are just talking about owning land there really isn't any insurance policy to protect the land. Instead the most common insurance would be some form of liability protection – often referred to as an umbrella policy to protect your personal financial resources in case something happens to another person while they are on your land – for which they claim you are responsible.

<u>So when I talk with my insurance agent what should I expect and what should I ask?</u>

In order to obtain the insurance coverage you need for your operation, you must communicate your needs to the agent. The whole idea of obtaining insurance is based on several premises. **First**, you are paying money for insurance so you expect to be covered. The worst surprise is buying insurance and then finding out it doesn't apply when you need it most. **Second**, you won't be able to obtain the insurance coverage you need unless your agent knows what you are doing. **Third**, this is why it is important to be through and explain what you are doing so the agent can write the policy you need. If you are engaged in farming, then it is important to ask your agent if the policy will cover you for what you are doing.

The farm liability policy is designed to provide liability coverage for accidents which might happen on the farm premises. This would cover accidents to you or your family, to your employees (but only in limited circumstances if state law requires you to obtain separate workers compensation insurance), and to third parties, such as your guests or customers who visit the farm, as long as the injuries occur in connection of what is defined as farming. A commercial business policy is written specially for the business involved and is designed to provide liability protection for the types of activities conducted in connection with the business.

If something happens on your farm and insurance coverage becomes an issue – for example a customer is injured – then the most critical question for you, as the insured, is whether or not the insurance you purchased covers what happened. This will be decided by examining the policy language to see what is covered and more importantly, to see what is excluded.

A Realist's View of How Insurance Operates

Researching how insurance applies to owning land requires thinking about how insurance works as a business. Reading policies and the exclusions – plus talking with

various experts about how policies are interpreted – leaves one with healthy skepticism. Insurance is a fact of life but it should be appreciated as a business, meaning you get what you pay for and nothing more. The following are what might be called a realist's rules on insurance. They are not intended to offend anyone but instead to provide my perspective.

First, you need insurance and probably can't live without it. This why you buy coverage, but you also buy it hoping you never have to use it. Second, in most cases, you won't be able to read or understand the language of the policy you buy (this is true even if you are a lawyer) so you have to trust the agent or company to explain what it provides. Whether the agent fully understands the coverage being provided will depend on the agent and the policy. Third, if something happens for which you believe you are insured the insurer's answer will most likely be the policy you have, isn't the right one. Remember, insurance companies don't make money by providing coverage for situations they didn't insure. This is why company adjusters probably start with the view whatever happened isn't covered and the burden is on you to show it is. Fourth, if the policy you bought was the right one, there is probably an exclusion somewhere in it which means you weren't covered for what happened. One rule for reading and understanding what an insurance policy covers is to start by reading the exclusions rather than the coverage.

If you start with those four rules in mind you won't be disappointed by the results. This does not mean all legal rulings will be in the favor of the insurance company. For example, courts often use the rule that ambiguous language is held against the company and for coverage. Also, in many situations, statements of the agent concerning what the policy covers, can be held against the company, even if the agent was wrong. If you are involved in a dispute over insurance coverage the best advice is to obtain the services of a lawyer well versed in this area of law.

<u>So what types of claims might a liability policy cover?</u>

If you have guests visiting you and one of them is injured in an accident while on your land, you can assume they may look to your insurance to pay for the damages. This is true even if they are your friend or relative and you did not cause the accident. The explanation for why you will probably face a claim is because the other person's insurer will require them to do so.

All insurance policies include what are known as a subrogation clause requiring the insured party to grant their insurer any rights they might have to seek recovery. Let's say your friend falls and breaks a leg on your land. When he gets medical treatment and seeks payment under his insurance policy, the insurer will ask where and how the accident happened. Rather than pay for the care, his insurer will contact you and expect your insurance to pay the costs under the theory since it happened on your land you are responsible. It will then be up to you and your insurer to either defend against the claim or to pay it.

<u>Does this mean I am responsible for anything that happens to anyone I let use my property? If that is true, why would I let others on my land?</u>

No you are not automatically responsible for any misfortune that happens to someone on your property. Just because an insurer may bring a claim doesn't mean you are responsible. Then the issue becomes your conduct – did you act negligently or recklessly in a way to cause the injury? If you weren't at fault for causing the accident, then you shouldn't be liable.

Iowa has enacted a specific law to protect landowners from liability for accidents or injuries happening to others while on your land. Iowa Code Chapter 461C, formerly called "Public Use of Private Lands and Waters" is what is referred to as a recreational use law. The purpose of such laws, some form of which is found in every state, is designed to encourage private land owners to let others use their land by greatly limiting when a landowner might be liable if something bad happens.

The law in §461 C.3 provides: "an owner of land owes no duty of care to keep the premises safe for entry or use by others for recreational purposes or urban deer control or to give any warning of a dangerous condition, use, structure, or activity on such premises to persons entering for such purposes."

This very limited duty is the same as that owed to a trespasser or one who enters your land without permission or right. The only exception to this landowner protection is in §461C.6. For example, if there is "willful or malicious failure to guard or warn against a "dangerous condition, use, structure or activity." This means you can't knowingly keep a dangerous bull in a pasture and encourage people to enter it without warning them A second exception is if you "charge" people to enter or use the land for recreational purposes. The law defines charge as "any consideration, the admission price or fee asked in return for invitation or permission to enter or go upon the land."

<u>So does that mean if I use one of the state or federal government programs that pay landowners to let people hunt or fish on their land, I am not protected?</u>

No, the exception for charging people to use land, specifically excludes in §461C.6 (2) compensation received by a landowners for any interest or right in land leased or transferred to the U.S. or the state. But if you are charging people to use your land, such as for hunting or riding dirt bikes, the protection would not apply. In those cases the issue might instead turn on the effectiveness of any written waiver of liability you had the person sign before allowing them to use your land.

<u>So what type of "recreational uses" does the Iowa law cover? Wasn't there a big court case on this not too long ago?</u>

The law when first enacted in the 1970s included a definition of "recreational purposes" which includes most predictable outdoor activities such as "hunting, trapping, horseback riding, fishing, swimming, boating, camping, picnicking, hiking" and many others. The common theme with activities was them taking place outdoors, and the sporting aspect of the uses. Unfortunately many landowners and organizations came to believe the law

covered just about any reason others might be on the land. This misreading of the law contributed to the controversy surrounding the case you mentioned.

In 2011, the Iowa courts faced a dispute involving farm owners who had routinely allowed visits by school kids and teachers to their farm. The case, *Sallee v. Stewart*, 827 NW 2d 128 (Iowa 2013) arose after a teacher suffered injuries falling through an opening in the haymow that had been covered over with bales. To make a long story short, the Iowa Supreme Court, correctly held the law as it was then written did not cover the school visits and people jumping in the hay mow because these activities did not fit even a liberal reading of "recreational purposes" as used in the law. The Courts ruling lead to an outcry about how it had misread the law and how the ruling would make it impossible for school visits to farms like the one involved in the case to happen. These concerns the Court got the law wrong were overblown and largely incorrect. Instead, what needed to happen and did happen was for the Iowa Legislature to amend the law to clarify the definition of "recreational use" to include "educational activities" and to include the activities of accompanying persons, such as the teacher injured in *Sallee*. The amendment also made it clear a landowner does not lose the protection of the law "solely because the holder is guiding, directing, supervising or participating in any recreational purpose." This amendment was added because the Court's ruling in *Sallee* raised the fear landowners could be liable if they were involved in the activity.

For purposes of property law the 2013 amendments added a new legal term "holder" to use in describing the types of parties involved. In §461C.2 (s) "holder" is defined to mean: "the possessor of a fee interest, a tenant, lessee, occupant or person in control of the premises; provided however holder shall not mean the state of Iowa, its political subdivisions or any public body or any agencies, departments, boards or commissions thereof." As you can see the law is written broadly to cover most conceivable forms of property ownership or control.

Farm Names

We have always called our farm Happy Valley Farm. Is there a way we can legally claim the name so no one else in the county can use it?

Yes, the Iowa Code in §557.22 allows owners of farms to record the name of a farm and a description of the land with the county recorder. Once the name is recorded and the required fees are paid to the recorder the farm name can't be recorded for another farm in the county. If the whole farm is later transferred or sold, the transfer many include the registered name of the farm. If only a portion of the farm is transferred, the registered farm name is not transferred unless the deed of conveyance provides for it. If the owner of the farm name wishes to cancel the name, this can be done by paying a fee with the county recorder to do so.

We own a farm and it has been in our family since the 1890s. I have heard about a "Century Farm" program - who runs it and how does it work?

Congratulations on having such a long family history with Iowa farmland – you are like thousands of other Iowa landowners and farmers. In 1976, as part of the Bicentennial, the Iowa Department of Agriculture and land Stewardship (IDALS) initiated a program to recognize Century Farms – farms owned by the same family for 100 years or more. That year over 5,000 farms were recognized and each year since IDALS has accepted applications for new "century farm" recognition. An event is held each year at the Iowa State Fair to recognize these landowners. The application to be recognized as a Century Farm can be found at the IDALS website (http://www.iowaagriculture.gov/century/centuryApplicationProcess.asp)
To be eligible for recognition the farm must have been in consecutive ownership by the same family for 100 years or more, must include at least 40 acres of the original land holding, and the present owner must be related to a person who owned the land 100 years ago. Applications must be notarized and postmarked to IDALS by June 1st. As of 2015, over 18,000 Iowa Century Farms have been recognized.

Is the Century Farm program part of Iowa law or just a program developed by IDALS?

There is no law creating the Century Farm program, instead IDALS used its rule making authority to create the program. However, the "Century Farm" status is referred to in one section of Iowa law relating to urban renewal. In §403.17 (10) the definition of "economic development area" provides county officials may not designate agricultural land, including any part of a "century farm" as an area for urban renewal, unless the owner of the farmland agrees to the inclusion. That section of land includes a definition of "century farm" as meaning "a farm in which at least forty acres of such farm have been held in continuous ownership by the same family for one hundred years or more."

Do I have to be actively farming the land to be recognized as a century farm?

No, century farm recognition is based on continuous ownership within the same family, it does not require a family member be still actively farming the land.

Restrictions on Selling Land to Corporate Farms and Non –Resident Aliens

Is there anyone I can't sell my farmland to or leave it to in my will?

The starting proposition of law on owning property and farmland in the U.S. is anyone can buy it or own. Meaning an owner can sell (or give) land to whomever they choose. This reflects the idea the law does not embrace "restraints on alienation" or restrictions on transferring land. A second element is any individual can own as much land as he or she wants, with no restrictions on the amount or the legal title. This right is protected by the federal constitution and it protects the rights on any U.S. citizen to buy land in any state in the nation. However, in Iowa, and a handful of other states in the Midwest, there are two exceptions on the rule of who can own farmland. First, Iowa Code Chapter 9I restricts certain types of corporations, and some other business entities like no-testamentary trusts, from owning farmland. Second, an individual classified as a "non-resident alien" (NRA) by federal immigration authorities – and businesses where 10% or

more is owned by NRAs – may not purchase and own farmland in Iowa. Both laws are somewhat complex and full of exceptions so to understand how they might apply to any particular set of facts – or type of corporation – it is important to get individual legal advice. Here are some general rules about what the laws provide.

First, the restrictions on corporate farming apply primarily to large corporations – such as those traded on public stock exchanges, specifically corporations with more than 25 shareholders. A series of exceptions apply for corporations, partnerships, testamentary trusts (meaning they were created by an individual to carry out an estate plan) and other business entities owned by farm families and the relatives. There is also an exception for "authorized farm corporations" with fewer than 25 shareholders, created for owning farmland. This is what I call the "doctors and lawyers" exception. However, authorized an farm corporation can not own more than 1500 acres and any individual can only have a business interest in one of these legal entities.

Second, for the NRA law, individual and business restricted from owning farmland can purchase up to 320 acres for conversion to non-farm use, and the conversion must occur within 5 years. During this time the property must be leased to an entity eligible to own farmland in Iowa.

Why were these law enacted?

Both laws were originally enacted in the mid 1970's when farmland values were increasing and there were growing concerns corporations and wealthy foreigners were going to start buying up Iowa farmland and competing with our farmers. The Iowa General Assembly passed the laws to protect the ability of individuals and farm family businesses to buy land – and to make it possible for the state to prevent exploitation of the soil – by having jurisdiction over those who own it.

What happens if the laws are violated?

If county and state officials suspect or become aware of potential violations of the corporate farming laws – they are authorized to bring legal action to prevent the violation and impose penalties. Similarly, the NRA law provides for legal action to address restrictions.

What if I want to leave my farm land in my will to my relatives who live in Denmark, does this law mean I can't do so?

Yes, the terms of Chapter 9I prohibit foreign citizens from being able to continue to own farmland if they receive land as a bequest. But the law gives people subject to this restriction up to two years to sell the land and they can keep the proceeds received from the sale. If they don't sell it within the time, the law provides the land "escheats" to the state, meaning the state could take legal action to confiscate the land, see §9I.11.

How does anyone know if farmland is "owned" by an NRA or restricted business?

This is a good question because with our localized county land records and laws making it easy to form corporations being able to actually knowing who owns any tract of land is not simple. The starting point is the county recorder where land records such as title deeds and contracts to sell land are recorded. These records would include the names of the individuals or business entities holding the title. But at this point two problems become apparent. First, how do you know the "recorded" deed is the most recent transaction representing ownership of the land? Second, how do you know if the listed individuals are the actual beneficial owner of the business entity (meaning they get the profits) rather than just people listed in the records – what the law might consider as "straw men"?

On the first question, one reason deeds are recorded is to create a priority in time and to prevent other people from filing a later claim to the same property. However, if you trust the seller not to sell the land again or have a reason to hide that you own it, for example you are a NRA, you might be tempted not to file the actual deed.

In 1979, the Iowa Legislature passed a law §558.44 specially designed to deal with this temptation. The law, titled "Mandatory recordation of conveyances and leases of agricultural lands," requires every conveyance or lease involving farmland – whether a sale, an installment contract or even a farm lease if by its terms it is 5 years or longer - must be recorded within 180 days with the county recorder. Failure to file a conveyance or lease can result in penalties of $100/day for each day of violation. The idea behind this requirement is as a result county land records might be more effective in identifying transactions possibly violating Chapter 9H or 9I. The mandatory recording law provides if the conveyance is to an NRA, then it has to be accompanied by an affidavit giving the name, address and citizenship of the individual NRA. If the NRA is a business entity then information has to be given for the individuals holding the farmland.

<u>What is the legal effect on the conveyance if it not recorded?</u>

The law provides "failure to timely record shall not invalidate an otherwise valid conveyance or lease."

<u>How des the state know who leases the land if the conveyance recorded just gives the business name?</u>

On the second question of how you know who actually owns the corporate entity the truth is it may not be readily possible. Iowa has some of the least restrictive law in the U.S. on forming corporations. The documents required to create a corporation are filed with the Secretary of State and do not reveal any names or identification of the individuals owning the corporation's shares. The theory is a law like 9-I is self-enforcing in that people will not risk being found in violation so they won't break it. Clearly this idea is only as valid as the fear your illegal action will be discovered and punished – and any punishment will be larger than the gains achieved by violating the law.