

FARM LEGAL SERIES

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Restrictions on Farm Entities

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INTRODUCTION

Agricultural producers have used legal entities to minimize legal liability, transition assets for estate planning purposes and to take advantage of government programs. However, under what is referred to as “corporate farming” laws, Minnesota law restricts certain legal entities from owning agricultural land or engaging in farming. The stated purpose of the statute is to “encourage and protect the family farm” by not allowing outside investment in production agricultural. Whether or not the statute achieves this objective is not the purpose of this article, but, instead, this article addresses the restrictions imposed by the statute and the applicable exceptions and exemptions to the statute.

RESTRICTIONS

Broad Restrictions

Under Minnesota law, no corporation, limited liability company, pension or investment fund, trust or limited partnership shall engage in farming. Nor shall any corporation, limited liability company, pension or investment fund, trust or limited partnership, directly or indirectly own, acquire, or otherwise obtain any interest, in agricultural land other than a bona fide encumbrance taken for purposes of security.

Definition of “Farming”

For purposes of the statute “farming” means the production of agricultural products, livestock or livestock products, milk or milk products, or fruit or other horticultural products. However, “farming” does not include: processing, refining or packaging of said products; provision of spraying or harvesting services by processor or distributor of farm products. Nor does “farming” include production of timber or forest products, production of poultry or poultry products, or the feeding and caring for livestock that are delivered to a corporation for slaughter or processing for up to 20 days before slaughter or processing.

Both the legal entities affected and the scope of the restriction is extremely broad. The analysis is usually not whether the farming activity is within the scope of the restrictions but, instead, whether there are any applicable exceptions or exemptions that the legal entity qualifies for.

EXCEPTIONS/EXEMPTIONS

Exceptions

The Minnesota statute makes an exception for certain “family farm” entities. The “family farm” exceptions generally require one or more persons residing on the farm or

actively engaging in farming to be a shareholder, member or other beneficiary of the legal entity that owns the agricultural land or is farming the agricultural land.

For example, an “authorized farm corporation” may not hold more than 1500 acres, may not have more than 5 shareholders, which all must be natural persons, may have only one class of shares, and its revenue from rent, royalties, dividends, interest and annuities must not exceed 20% of its gross receipts. Further, the shareholders holding 51% of or more of interest in the corporation reside on the farm or are actively engaged in farming.

Petition Exemption

In addition to the exceptions for “family farm” entities mentioned above, the Minnesota statute also gives the Minnesota Commissioner of Agriculture the right to exempt other legal farm entities from the restrictions. To receive this exemption, must meet two criteria:

1. exemption would not contradict purpose of this section, and
2. the petitioning entity would not have a significant impact upon the agriculture industry and the economy.

No Limited Liability Partnership Restriction

Although neither an exception nor exemption, the statute does include a limited liability partnership (LLP) as a prohibited farming entity; therefore, because the statute is silent, limited liability partnerships are exempt from the restrictions.

REPORTING REQUIREMENTS

Initial Report

Even if excluded or exempt, the farm entity is required to do an initial report to the Commissioner of Agriculture prior to owning

or commencing the farming operation. The initial report requires:

1. the name of the pension or investment fund, corporation, limited partnership, or limited liability company and its place of incorporation, certification, or registration;
2. the address of the pension or investment plan headquarters or of the registered office of the corporation in this state, the name and address of its registered agent in this state and, in the case of a foreign corporation, limited partnership, or limited liability company, the address of its principal office in its place of incorporation, certification, or registration;
3. the acreage and location listed by quarter-quarter section, township, and county of each lot or parcel of agricultural land or land used for the keeping or feeding of poultry in this state owned or leased by the pension or investment fund, limited partnership, corporation, or limited liability company;
4. the names and addresses of the officers, administrators, directors, or trustees of the pension or investment fund, or of the officers, shareholders owning more than ten percent of the stock, including the percent of stock owned by each such shareholder, the members of the board of directors of the corporation, and the members of the limited liability company, and the general and limited partners and the percentage of interest in the partnership by each partner;

5. the farm products which the pension or investment fund, limited partnership, corporation, or limited liability company produces or intends to produce on its agricultural land;
6. with the first report, a copy of the title to the property where the farming operations are or will occur indicating the particular exception claimed under subdivision 3; and
7. with the first or second report, a copy of the conservation plan proposed by the soil and water conservation district, and with subsequent reports a statement of whether the conservation plan was implemented.

Annual Report

In addition to the initial report, the legal farm entity must do an annual report that contains the same information that was required in the initial report (and that is listed above). The annual report must be filed with the

Commissioner of Agriculture prior to April 15 of each year.

Failure to File Report

The failure to file the report subjects the reporter to a \$500 civil penalty. The penalty is a lien on the land being farmed until the penalty is paid.

CONCLUSION

The Minnesota corporate farming law broadly restricts legal entities from owning agricultural land or engaging in farming. Individuals should consider the Minnesota corporate farming law before creating and transferring agricultural land into a legal entity to minimize legal liability, transition assets for estate planning purposes or to take advantage of government programs. Individuals should consider the Minnesota corporate farming law before using a legal entity to operate the farm.

For more information:
extension.umn.edu/agriculture/business