



I'm a Farmer. When Do I Need a Lawyer?

By Scott Carlson, Esq.
Farmers' Legal Action
Group, Inc. Executive
Director and Attorney
at Law, with
Andy Pressman,
NCAT FR SAN-NE
Project Leader
Published Sept. 2021
IP616

Agriculture is an economic and social bedrock of the United States, yet for decades, farmers, ranchers, and farmworkers have endured growing challenges that increase their levels of stress. The Farm and Ranch Stress Assistance Network Northeast (FRSAN-NE) aims to improve behavioral health awareness, literacy, access, and outcomes for farmers, ranchers, and farmworkers in the Northeast by developing a service provider network that can assist and meet the unique needs of agricultural workers. FRSAN-NE Network members developed a Resource Working Group to focus specifically on providing information and materials designed to inform those who interact with this population. The resources provided here were created to provide information needed by those who want to offer support but don't have expertise in the mental health profession.

Contents

Looking for an Attorney..... 1
Retaining an Attorney.....2
Keep Written Records2
Summary4
Further Resources 4



Farmers' Legal Action Group (FLAG)
877-860-4349
lawyers@flaginc.org

This publication is produced by the National Center for Appropriate Technology through the ATTRA Sustainable Agriculture program, under a cooperative agreement with USDA Rural Development. ATTRA.NCAT.ORG
This publication was also made possible in part by funding from the USDA's National Institute of Food and Agriculture, Farm and Ranch Stress Assistance Network (FRSAN), projects 2019-70028-30464 and 2020-70028-32729.



Introduction

On any type of farm or ranch, there may be times when problems are serious enough and the stakes high enough that farmers need legal advice. An experienced attorney should be able to explain how the laws affect a farmer's individual situation, give legal advice on which choices best fit the farmer's goals, draft the legal papers needed and, if necessary, represent the farmer in court, mediation, arbitration, or other proceedings intended to resolve disputes.

should be able to consult with someone with more experience. An experienced attorney should be happy to give references from other farmers.

Looking for an Attorney

There are several things to look for in an attorney. If the farmer does not know the attorney, it makes sense to ask for references from other farmers and friends. If you can, interview several attorneys before you choose to hire one. A few suggestions about what to look for when picking an attorney follow.

2. Willingness to Sometimes Say They Don't Know

No matter how good attorneys are, they will not know the answer to everything. Legal work in the farm area is complex. Good attorneys answer some questions by saying they do not know or will need to look it up. Be wary of someone who has a smooth answer to every possible question.

1. Experience in Helping Farmers

Because legal work in the farm area is complicated, experience is necessary. Ask about a lawyer's experience, the areas of law in which they practice, and how long they have practiced law. It can also be helpful to ask what kind of legal matters the lawyer works on most often. Also, ask about the lawyer's types of clients and whether they are typically individuals or companies. You want to find an attorney who is most often on the side of individuals. At a minimum, the attorney

3. Trustworthiness

Trust may be the most important thing when choosing an attorney. A farmer must trust the attorney with private financial documents and must be willing to explain all of the facts to the attorney—even those which might seem embarrassing. There are commonly two—or more—sides to any legal matter. Resolving such matters requires your attorney to be both an objective analyst of the law as it relates to your situation and a zealous advocate on your behalf. Trust between you and your lawyer is essential.

4. Reliability

Much of an attorney's work depends on meeting strict deadlines. Reliability is therefore extremely important.

Retaining an Attorney: Be Clear About the Work to be Done and the Cost

Private attorneys can be very expensive, and fees vary a great deal. A farmer working with an attorney needs to be sure of exactly what work the attorney will be doing and how much it will cost. Although the final bill cannot always be predicted easily, the attorney should be willing to give a good idea of what to expect. Ask about how fees will be charged to you. Some attorneys bill by the hour, but some may offer a “flat fee,” meaning they will handle your case for a set amount of money, no matter how much (or how little) time and effort is spent on the matter. You should also ask about the timing of payment(s) and whether an up-front retainer fee is required before the lawyer’s work begins. Ask that the lawyer give you a monthly statement detailing the work performed, services rendered, the hourly rate, and the number of hours per task.

Related FRSAN-NE Resources

Weathering the Storm: A Guide to Preparing for Disaster and Finding Disaster Assistance for your Farm or Ranch

Farm Stress and Emotional Well-Being

Helping Farmers in Financial Crisis

Keep Written Records of your Farming Operation and Credit, Purchase, Sales, and Other Agreements

If you as a farmer need an attorney to resolve a dispute, or even need to have an initial consultation with one, you will be in a better position if there is documentary evidence related to the problem, dispute, business decision, or situation at hand.

Farming is a way of life. But farming is also a business. If you cultivate, operate, or manage a farm for income, you are in the business of farming. But the business aspects of farming have long been softened by informality. Informal and unwritten agreements or transactions may work well for some people in some cases, but, in general, it is important to keep thorough written records of dealings with lenders, creditors, government agencies, suppliers, buyers, and customers—including other farmers and even your neighbors. Additionally, recordkeeping is necessary for applying for loans, participating in farm support programs, obtaining crop, livestock, or dairy insurance or risk management products, and participating in other state and federal programs, such as disaster recovery assistance and pandemic relief.

Like all businesses, your farm needs to establish and maintain good and accurate recordkeeping for

Farm-Specific Issues that May Require an Attorney

- Denial of farm program benefits
- A reduction of, or less than adequate, farm program benefits
- Denial of a crop insurance claim
- A reduction of, or less than adequate, payment on a crop insurance claim
- Discrimination in federal or state farm-support programs, including farm credit, or by private lenders or other parties
- Land border disputes
- Pesticide drift
- Repossession of farm equipment
- Landlord/tenant problems
- Farm and/or farmland transitions, both within and outside the family
- Government exercise of eminent domain
- Grazing rights and rates on federal lands
- Disputes with lenders on existing credit and debt
- Purchasing or selling farmland or homestead
- Leasing land or equipment
- Foreclosure
- Bankruptcy
- Entering, ending, or disputing contracts
- Denials or difficulties obtaining credit from the Farm Service Agency or private lenders
- Buying or selling land
- Planning to pass the farm on to the next generation or other family members
- Tax problems involving the farm
- Divorce, if it involves distribution of farm assets or joint farm program benefits or contracts
- Having visitors or customers on your farm to pick fresh fruits or vegetables, ride horses, attend a petting zoo, cook or dine on local food, or other agritourism activities. (Farms engaged in agritourism likely have additional legal needs, such as requirements to post notices of risk to the farm’s visitors and enforce social distancing requirements, and they likely require additional insurance coverage.)

General Issues Requiring an Attorney (but not necessarily one experienced in farm law)

- Civil disputes not involving the farm
- Family disputes, such as child custody matters or divorces not involving the farm
- Intentional acts, negligence, or accidents resulting in personal injury or property damage to you or other parties
- Arrests, criminal investigations, or questioning by police, sheriffs, or other law enforcement

long-term success; not only for business tracking and decision-making, but also for resolving disputes and disagreements. As a matter of law, many agreements must be in writing to be legally enforceable. Even when it is not required by law, it is a good idea to keep written records. The main problem is not unfair or sharp business practices—although that is common enough—but, instead, simple confusion and misunderstandings. Most disputes about leases, contracts, purchases, sales, and other legal agreements are the result of the two basically honest parties having different interests and different ideas about the meaning of the agreement itself. This type of problem is much more common in an age of conservation compliance; government crop, livestock, and dairy programs; and complex security agreements. Even the most honest and trusting relationships can change through no fault of farmers or those with whom they do business. Banks and businesses change hands or are sold out; landlords can pass away or sell the land. The list of possible problems is very long. Keeping good records of business dealings is a little like buying insurance. It is done not because farmers expect to have problems, or because they want to go to court at the drop of a hat, but because in that rare case that farmers do have serious business problems, it will be extremely important to be able to prove exactly what happened and when.

While there are many ways to keep records, it is important to use a system that you are comfortable with and that is suited to your farming business. One way to think about keeping good records is to imagine that they may be needed to prove to a stranger exactly what happened between the farmer and the other party. No one's memory is good enough to recall all of the important details. Some suggestions follow.

1. Keep Copies of All Documents and Records

Farmers should keep copies of all paper documents, e-mails, electronic documents, photos and videos, and any other records of the farm. Keep copies of all loan agreements, promissory notes, security agreements, mortgages, contracts for deed, leases, purchase and sales receipts or invoices, and the like, and note on them the date they were signed, sent, or received.

Keep e-mail exchanges you have with lenders, creditors, suppliers, buyers, customers, crop/livestock/dairy/farm/home/auto/equipment insurance agents, others with whom you have agreements, and government program agencies and employees. Often, simply maintaining these emails in your email account will suffice, but make sure your account has sufficient storage space, that all emails are maintained, and that your email provider does not auto-delete or purge these records after a period of time.

Keep and maintain all records. Electronically stored information, such as emails and scanned documents are fine, but make sure they are securely stored and backed up regularly by a reputable service. The same goes for photos and videos. Many documents, such as credit and lending agreements and insurance policies, are now distributed for agreement and signature through DocuSign, Adobe Acrobat Portable Document Format (PDF), and other electronic or online programs. Make sure to save or download the final, signed copy for your own files and keep it for yourself. If you end up in a dispute, it may be difficult to get a copy of such documents from the other party.

If you direct-market your crops and use an online or mobile sales transaction program such as Square, Clover, Shopify, PayPal, or another similar product, keep all the sales receipts and other business records generated by these services.

2. Put Important Contacts and Communications in Writing

Farmers should document every important contact with their lenders, creditors, suppliers, buyers, and customers. Letters should be written, sent, and have copies kept. Often, an email will suffice, but make sure it is kept by your email provider and does not auto-delete after a period of time.

Keep and maintain all records. Electronically stored information, such as emails and scanned

If you direct-market your crops and use an online or mobile sales transaction program such as Square, Clover, Shopify, PayPal, or another similar product, keep all the sales receipts and other business records generated by these services.

documents are fine, but make sure they are securely stored and backed up regularly by a reputable service.

3. Verify What Is Sent and Received

In many cases, it will be important to show that documents sent were received. There are two simple ways to create proof that someone received a letter or form. First, farmers can mail letters and documents by certified mail, return receipt requested, and keep the evidence of receipt.

A second way to prove that someone received a letter is to bring two copies of the letter or form to the other person. The person accepting the document should be asked to write on each copy: (1) the word "received"; (2) the date; and (3) his or her signature. Farmers should keep a signed copy for themselves.

4. Document Telephone Calls and Conversations in Writing

Farmers should keep a journal of every conversation they have with lenders and creditors, farm program officials, crop insurance providers, and adjusters, as well as every important conversation they have with suppliers, buyers, customers, and others with whom they have agreements. A short notation in a journal of the date and significant details of the conversation can help farmers remember dates and details. If anything important is said in a telephone call or in a meeting, the best strategy is to write a letter or email to the other person immediately. The name of the person spoken with should be mentioned, along with the date of the call or meeting and what was said. The letter should also include a statement that the understanding of the conversation described in the letter will be presumed correct if no written response is received in a certain number of days, such as seven.

5. Take Pictures or Videos

Recall the adage that "a picture is worth a thousand words." These days, nearly everyone has a mobile phone with a camera in their possession most of the time. As such, it is relatively easy to document damage to crops, livestock, buildings, farm equipment, vehicles, fences, violations of property rights or rights of way (for example, tire tracks trampling crops or pastures), and other things. A picture or video may explain to a viewer

damage or other complexities more effectively than a written or verbal description; oftentimes, the most effective communication may be a picture with an accompanying description. For example, your lawyer might use your pictures in an appeal of denial of farm programs benefits (a picture could help determine crop yield or condition), or in a dispute of a denial or reduced payout of a crop/livestock/dairy insurance claim, or, often importantly, in determining losses for a disaster recovery program (and therefore benefits from that program), and in other situations where a visual image is a helpful descriptor.

Summary

Establishing and maintaining good recordkeeping habits can help protect your farm business when legal issues arise. Sometimes, though, records may not be enough to resolve a dispute, and situations do arise when the services of an attorney are necessary. When this happens, finding an attorney with farm experience and expertise can make an important difference.

Further Resources



Farmers' Legal Action Group (FLAG) is a nonprofit law firm providing legal services and support to family farmers and their communities to help keep family farmers on the land. FLAG partners with many legal providers in the Northeastern United States and can provide attorney referrals, as well as brief legal advice on certain issues, to farmers in the FRSAN Northeast Region. FLAG can be contacted toll-free at 877-860-4349 or emailed at lawyers@flaginc.org.

I'm a Farmer. When Do I Need a Lawyer?

By Scott Carlson, Esq. Farmers' Legal Action Group, Inc. Executive Director and Attorney at Law, with Andy Pressman, NCAT FRSAN-NE Project Leader

Published September 2021

© NCAT

Tracy Mumma, Editor • Amy Smith, Production

This publication is available on the Web at: ATTRA.NCAT.ORG

IP616

Slot 647

Version 092321



Establishing and maintaining good record-keeping habits can help protect your farm business when legal issues arise.