

More Legal Scenarios Involving Farmers and Ranchers

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August 2024

Agricultural Law and Taxation Blog, by Roger McEowen: <https://lawprofessors.typepad.com/agriculturallaw/>
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Overview

As I have noted many times before. There are many ways in which the law intersects with the daily lives of farmers and ranchers. Today's article addresses several of those areas. Just a little thinking out loud on a random basis.

Self-defense; Good Samaritan laws; preparing for the exit; and cleaning out fencerows – some random topics addressed in today's post.

Self-Defense

A common question in agricultural settings is how far you can go in defending your personal property from those that would cause damage or steal.

Agricultural property is often exposed to those who might want to steal, damage or destroy. Where's the line drawn in far you can go to protect it? In general, to protect property from vandalism and theft, you have a right to use force that is reasonably necessary under the circumstances. But you can't use force beyond what could reasonably be believed necessary under the circumstances, and you can't use such force as is likely to lead to great bodily injury or death.

A famous Iowa case from the early 1970s points out that you can't use force that could physically harm or kill another person in defending your personal property if your life isn't likewise threatened. For instance, be careful using guard dogs to ward off trespassers. The general rule with respect to guard dogs is that you can't use any more force through an animal than you could personally. So, if a guard dog injures or kills an intruder, it is the same as if you had done it. Likewise, liability for a dog's dangerous propensities cannot be avoided by posting a sign notifying trespassers of a dog's presence.

You can take steps to protect your property. Just don't use any force that is more than what is necessary for the situation.

Relatedly, what can you do within the bounds of the law to defend yourself from an animal such as a dog or a bull or other farm animal that isn't yours? In recent years, some states have enacted "stand your ground" provisions that allow you to use whatever force you think is necessary to protect yourself from an equivalent threat, up to and including lethal force. You don't have a duty to get away before using force. But you can't just fire away at will. Your use of deadly force must be justified – and that you'll have to prove. You don't get a presumption that you could use deadly force.



In rural settings, the issue often comes up with dogs and livestock that don't belong to you. If the animal threatens you with great bodily harm or death, then you can take the animal's life. But you'll have to establish through video or eyewitness testimony that your action was justified. You'll likely be charged with animal cruelty or damage to property and then you must establish that you acted properly based on the circumstances. Remember whether you acted properly is based on whether you had a reasonable fear for your life. A jury will determine that question if the matter ends up in court.

So, only take an animal's life when it's the last resort, and make sure you have evidence to back up your action.

Good Samaritan Laws

You're not legally required to render aid to another person who is in peril. But does the law provide any protection if you try to help?

The law used to discourage people from helping others in peril. One extreme example was the *Genovese* case in Queens, New York in 1964. Many people watched from their homes as Kitty Genovese was attacked in the early morning hours on her return to her apartment from work. No one did anything until it was too late. They later said that they feared liability for getting involved. This event helped spur the enactment in all states of "Good Samaritan" laws.

A Good Samaritan law specifies that if you help a person in peril without expectation of compensation, you can only be held liable for injuries resulting from recklessness or willful intent to injure. These state laws also provide slightly different treatment for emergency medical technicians and hospital staff.

Even though the law doesn't require you to help someone else in peril, if you do you won't be liable for any injuries resulting from your attempt to help unless your assistance is reckless, or you intentionally injure the person. Kitty's situation was horrible, but it did result in a good change in the governing legal rules. And, in agricultural settings, the rule can also apply in situations where aid is rendered to livestock in peril.

Preparing for the Exit

When it comes to estate planning, we tend to think of wills and trusts and powers of attorney. But there are other things you can do before those documents are drafted that will make creating those documents easier and smooth the transition upon death.

When you work on your estate plan, don't forget to organize and document other information for those that will need it. A good idea is to put in a binder a list of your retirement plan information, and copies of health and life insurance policies. Burial plot location and funeral instructions. Also, provide your email, computer and phone passwords as well as bank account information and data about your debts and bills. Also, put in that binder copies of your driver's license, birth certificate, social security card, and marriage license. Also include documents related to real estate, a list of your assets, land



that you own, stored crops, livestock and marketing contracts. Also include copies of crop insurance policies and USDA program contracts and all your key business relationships.

Make sure the right person knows where to find the binder and make sure they have access to it.

Having this information collected will be helpful for any additional steps in the estate planning process. It will also likely allow more efficient use of an attorney's time in drafting the necessary documents for your estate plan.

Issues when Cleaning Out a Fencerow

Cleaning up fencerows seems to be an ongoing project. But the cleanup process can generate legal issues that you might not have thought about.

When you're cleaning out a fence row legal issues can arise that you might not have thought about. For example, what should you do if there's a tree in the fence line? In that situation, each adjacent owner has an ownership interest in the tree. It's considered to be jointly owned and you could be liable for damages if you cut it down and your neighbor objects. But, if only the branches or roots of a tree extend past the property line and onto an adjoining neighbor's property, the branches and roots don't give the neighbor an ownership interest in the tree. In that situation, you can trim the branches that hang over onto your property. That's an important point, for example, if you are dealing with a thorn tree that can puncture tires.

Always make sure to trim branches, bushes and vines on a property line with care. Keep the neighbor's rights in mind when doing the cleanup work. Maintaining good communication is always beneficial when property line work is involved. Also, if a neighbor's tree falls onto your property, it's your responsibility to clean up the mess – but you can keep the resulting firewood. The converse is also true. And it's not a trespass to be on your neighbor's side of the fence when doing fence maintenance, such as cleaning out a fence row.

Conclusion

There will be more issues to discuss next time.

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