

More Legal and Tax Issues for Farmers and Ranchers

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November 2024

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

I have been on the road with seminars a lot recently and haven't had time to write much for the blog. I am off the road now for a few days and thought I'd take a moment to write about a few more legal and tax issues that farmers and ranchers must deal with on occasion. And, now that the political season is over (for the moment) I will pen my thoughts on that and the implications for agriculture and the producers of food and fiber for my substack – mceowenaglawandtax.substack.com

For today, however, I dive into water rights and conservation easements, the handling of long-term care costs, the definition of a tax home, negative easements and landlocked parcels. Those are the topics of today's post

Water Rights and Conservation Easements

Water is generally plentiful in the Eastern U.S., but not in the West. So, if you grant a conservation easement on your farm to a land trust that requires water to fulfill its objectives, that can raise some legal issues in the more arid parts of the country. What are the big issues? For starters, make sure you know what the precise water rights are. Most title insurance policies and title opinions on real estate won't tell you anything about water rights associated with the land.

If there are water rights on the donated land, you'll need to determine if the rights are material to the easement's conservation purpose. If so, then determine what's required to enforce those rights. You'll also need to restrict the use of the water rights consistent with the easement's conservation purpose. And you should make sure the water rights are maintained and used, and not abandoned. If they aren't enforced, you could lose the charitable deduction you claimed for donating the easement. And it could cause other problems for the land trust.

Needless to say, grants of permanent conservation easements on land with water rights require careful drafting of deed language. Make sure you get good legal advice. The value of the charitable deduction associated with the donation of a conservation easement is almost always claimed to be very large.

Handling Long-Term Care Costs

Planning for long-term care costs should be an element of a complete estate plan for many farm and ranch families. One way to address long-term care costs involves long-term care insurance. That makes it important to consider the terms and conditions when exploring long-term care policies. So,



what are some things to examine when exploring long-term care insurance? One is the duration of benefits. Policies cover from one to five years. Also, what triggers payment under the policy? There will be terms and conditions attached to those triggers. Make sure you understand them

Long-term care policies also have a waiting period that can be anywhere from a few days to a year. The longer the waiting period for benefits to pay out, the lower the policy premiums. Also, consider the daily benefit amount. Will the policy pay all of the daily long-term care costs or only a percentage? Perhaps the policy can be tailored to pay only the portion of costs that income doesn't. In that event, all the family's assets will be protected, and you may not have to gift assets to protect them.

Also make sure the policy has an inflation adjustment provision and that you understand the type of inflation adjuster.

Many insurance agents and financial advisors can provide estimates for policies and help you determine the type of policy that might be best for you.

Where's Your Tax Home?

The tax Code allows an employee or independent contractor to deduct temporary travel expenses while away from home. The problem is that "home" does not necessarily mean what you might think.

If you travel on business but are not "away from home" your travel expenses are nondeductible personal expenses. So, what does "home" mean? The IRS says that "home" is defined by being in the vicinity of your work. If you choose to live a great distance away for personal reasons, that means that the travel between the personal residence and the place of business is not business related. So, if you don't relocate soon after you're hired to work at a place of business that is far from your residence, you can't deduct travel expenses to and from the new place of business.

If you are hired for an "indefinite" assignment your tax home likely switches to the new place of business soon after the date you are hired. If you don't have a regular place of business and move from area to area for jobs, the IRS says you can't be "away from home" because you don't have a tax home, and you can't deduct travel-related expenses.

These "tax home" rules sometimes trip up farmers and ranchers that have non-farm jobs. Make sure you keep the rules straight to know when you can deduct travel-related expenses.

Negative Easements for Light, Air and View

An easement can be either affirmative or negative. Most easements are affirmative and entitle the holder to do certain things on the land subject to the easement. But if your land is subject to a negative easement, you can't do certain things. Negative easements are the same as restrictive covenants on land. Examples include riparian rights, lateral and subjacent support rights, and the right to be free from nuisances. However, most courts refuse to recognize a negative easement for light, air and view. With one exception – malice.

For example, in a case involving two Miami beach hotels, the court allowed a proposed 14-story addition to one hotel that would block the sunlight on an adjoining hotel's beachfront and cabana. The



law didn't recognize a negative easement for light, air or view. *Fontainebleau Hotel Corporation v. Forty-Five Twenty-Five, Inc.*, 114 So. 2d 357 (Fl. Ct. App. 1959). But a different court shut down a pig farm on a four-acre parcel in town next to a motel. The pig farm wasn't operated with any semblance of a real farming operation. *Coty v. Ramsey Associates*, 149 Vt. 451, 546 A.2d 196 (1988). Conditions were so bad that the court didn't have much trouble determining that it had been created for "spite" and with malice and was a nuisance. So, while the motel owner didn't have a negative easement for light, air or view, the pig farm was shut down and was liable for damages because of the owner's bad conduct.

Accessing Landlocked Parcels

Sometimes agricultural land is landlocked with no access to a public roadway. This can happen in several ways, but often arises when a portion of a tract is sold off, resulting in a landlocked parcel. In that event, how does the new owner get access? There are generally two possibilities.

The law may imply the existence of an easement from prior use if there has been a conveyance of a physical part of the grantor's land and before the conveyance there was a usage on the land that, had the two parts then been severed, could have been the subject of an easement that was required to use the adjacent parcel.

The law may also imply an easement based on necessity if the facts involve a conveyance of a physical part of the grantor's land, and after severance of the tract into two parcels, it is "necessary" to pass over one of them to reach a public road from the other. No pre-existing use needs to be present. Instead, the severance creates a land-locked parcel unless its owner is given implied access over the other parcel.

Ag land transactions should have any access easements specifically agreed upon in writing and recorded on the land records. This can help avoid future disputes.

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