

# **An Overview of Legal Issues Faced by Meat Goat Producers**

## **William W. Wheeler, Jr. and Sheri L. Mueller**

### **Unit Objective**

After completion of this module of instruction the producer should be able to use legal information and knowledge to protect and manage the family goat farm. The producer should be able to use legal documents when purchasing and selling products from the goat farm and to organize the farm operation using one of the many business entities. The producer should be able to score a minimum of 85% on the module test.

### **Specific Objectives**

1. Identify the two most common and serious sources of liability.
2. Match the classification of entrant upon an owners land.
3. State the meaning of the doctrine of “strict liability.”
4. Distinguish between a nuisance and a public nuisance.
5. State factors to consider when searching for landowner liability insurance coverage.
6. Identify the two primary stages of a secured transaction.
7. Identify when perfection of the security occurs.
8. Define a bill of sale.
9. State the components of a bill of sale.
10. Distinguish between a good and a bad pasture and/or farm lease.
11. Distinguish between a good and a bad production contract.
12. Match the different type of business entities with their definition.
13. State facts relating to the different types of business entities.
14. Distinguish between trademarks and copyrights.
15. State the purpose and intent of corporate farming laws.
16. Identify information regarding farming cooperatives.
17. Distinguish between contract laborers and employees.
18. Identify factors to avoid receiving a bogus check.
19. Distinguish between wills and trusts.
20. Evaluate a producer’s options when dealing with a potential divorce.
21. State the advantages of a pre-nuptial agreement.
22. Respond to options that a producer may use when dealing with a potential bankruptcy.
23. Respond to statements related to the Environment and the Clean Water Act.
24. Respond to statements related to the Packers and Stockyard Act.
25. Respond to statements related to urban sprawl.
26. State the meaning of pro bono legal services.

## Module Contents

- Introduction
- Landowner Liability
  - Liability for persons on land
  - Liability for activities on land
  - Landowner liability insurance
- Contracts
  - Secured transactions and the Uniform Commercial Code
  - Bill of sale
  - Goat registration
  - Pasture and farm leases
  - Production contracts
- Choosing a Business Entity
  - Sole proprietorship
  - Partnership
  - Limited liability company
  - Corporation
- Trademarks and Copyrights
- Corporate Farming Laws
- Farming Cooperatives
- Labor Issues
- Bogus Check Collection
- Wills and Trusts
- Divorce
- Pre-Nuptial Agreement
- Bankruptcy
- The Environment and the Clean Water Act
- The Packers and Stockyard Act
- Urban Sprawl
- Pro Bono Legal Services

## **Introduction**

From the initial dream of creating a commercially successful meat goat operation to the daily management of that operation, not a day will go by that will not include dealing with a legal issue of one type or another. Legal issues dealt with by meat goat producers as part of the operation of their business include environmental regulations, labor issues, production contracts, leases, Uniform Commercial Code Financing Statements, and landowner liability, just to name a few. Legal issues that do not directly affect the farming operation, but which are no less important to the continued existence of the meat goat operation, include divorce law and prenuptial agreements, bankruptcy law, and bogus check collection. The purpose of this module is to introduce the basic legal issues most likely dealt with in a meat goat production operation. Since most of the issues addressed are governed by state law which differs from state to state, this module is not intended to give specific legal advice but rather to provide an overview of potential issues a producer might face so that the producer can address the issue in an appropriate manner. The best advice is always to seek the professional legal services of an attorney in your area who is familiar with the laws of your state. This module is not intended to provide the reader with anything more than a brief overview of the complex legal issues with which you must become familiar in order to guide a successful operation.

## **Landowner Liability**

Land ownership in the United States has many benefits but it also has many potential liabilities. As urbanization spreads farther and farther into what have historically been agricultural lands, the issue of landowner liability has become increasingly important to farmers. Though landowners are liable under a wide variety of circumstances, the two most common and serious sources of liability are those that arise from the presence of people on your land and those that arise due to activities taking place on your land.

### ***Liability for persons on land***

Most states determine the duty of care required by a land owner based on the classification of the entrant upon his land. Under this legal theory, a person entering upon a landowner's land would be classified as a trespasser, licensee, or invitee. A trespasser is someone who is on the land without the owner's permission and from whose presence the landowner receives no benefit. Generally, a landowner owes no duty of care to a trespasser but may take no steps to intentionally harm the trespasser in any way. If the landowner is aware of frequent trespassers upon his land, then his duty of care may be somewhat higher and the trespassers must be warned of any dangers, especially those they are unlikely to discover themselves, that could cause serious injury or death. It is also considered appropriate to alert the proper law enforcement authorities if there are frequent, unwelcomed, and previously warned trespassers on the property. While nothing may happen after law enforcement authorities are alerted, that step may be an important one should activities involving trespassers result in harm or physical injury.

A landowner owes a greater duty of care to child trespassers in some instances due to the fact that children lack the ability to appreciate risks and apply mature judgment. The "attractive

nuisance doctrine” requires that the level of care for child trespassers be adequate to protect young children from injury if any condition exists on the land that could lure children into danger. The Courts have discretion to determine liability of the landowner in relationship to the nature of the injury, the nature of the “attractive condition,” and the age of the child, with younger children garnering more latitude from the Courts than older children with perceived greater knowledge of dangers.

Naturally existing dangers, such as ponds and other bodies of water, generally do not require any additional level of care. However, the landowner must check with the local jurisdiction in which he/she resides as there may be decisions from the Courts in that particular state requiring landowners to take special precautions when bodies of water (either naturally occurring or manmade) exist on a property. Any improvements associated with the pond or body of water, such as boat docks, boats, or swings, may be considered as an attractive nuisance and require a greater duty of care. The greater duty of care may be anything from a sign warning entrants to the dangers posed by the water bodies to a fence around the body of water much as is required consistently of landowners who build swimming pools on their property. Consulting with local insurance agents and attorneys more familiar with a particular state’s laws and common practices is advisable.

A licensee is someone on the landowner’s property with the permission of the owner that does not provide a benefit to the landowner. Social guests are an example of a licensee. A landowner owes a higher duty of care to a licensee than to a trespasser. A landowner must notify a licensee of any hidden dangers on the property and not act in any way that could cause harm to the licensee. In some jurisdictions, a landowner may be required to repair any dangerous conditions for the benefit of licensees. Again, it is critical to check with local attorneys and insurance agents concerning the responsibilities of the landowner.

An invitee is someone who is on the land with the landowner’s permission and from whom the landowner receives some sort of benefit. An example of an invitee is a hunter or fisherman who pays a fee to use the property. An invitee is owed the highest duty of care by a landowner. A landowner is required to make the property reasonably safe for the invitee and is required to warn an invitee about any potential dangers on the property.

Some jurisdictions around the country have adopted a system of landowner liability based on a general duty of reasonable care for foreseeable risks, and many commentators are of the opinion that this entire area of the law is moving toward this general reasonable care standard. Under this system, a landowner owes a duty of reasonable care under all circumstances and to anyone on his property for any reason. Courts under this system determine liability by looking at such factors as foreseeability of the visitor’s presence, risk of injury, benefits of the harmful condition, and burden imposed on the landowner by correcting the condition.

In those instances where the landowner has created a situation that is extremely dangerous, the doctrine of “strict liability” is applied by the courts. The doctrine of strict liability holds that the creation of the dangerous situation alone results in liability for the landowner. An example of the creation of a dangerous situation would be the storage of chemicals or explosives on the property or the keeping of animals that are deemed dangerous. The doctrine of strict liability

will be applied both in jurisdictions that recognize a general duty of care by a landowner and those that recognize a duty of care based on an entrant's classification.

### ***Liability for activities on land***

A landowner may be liable for activities that take place on his/her property if those activities unreasonably interfere with the use and enjoyment of other people's property. Activities that unreasonably interfere with the use and enjoyment of another person's property generally fall into one of three categories. These categories are nuisance and trespass, which are common law violations, and the violation of environmental regulations.

The first type of activity that unreasonably interferes with another person's use and enjoyment of his/her property is called a "nuisance." A nuisance may either be a "private nuisance" in which it affects a small amount of adjacent land or a relatively close neighbor or it may be a "public nuisance" in which a larger number of people, such as an entire neighborhood or community are affected. Excessive animal noise, dust, tractor noise, flies, and noxious odors are examples of things which could constitute a nuisance. Nuisance claims are civil matters, not criminal, and therefore must be brought before the court by a complaining witness. In the case of a public nuisance, the action may be brought by an individual, association, or municipality.

When determining whether one landowner's use of land is an "unreasonable" interference of another landowner's use of land, the court must weigh several factors. First, the court must determine whether the offending use is suitable for the area in which it is being conducted. Second, the court must determine if the extent and character of the harm, as well as the nature of the use being interfered with, is appropriate for the area. Third, the court must determine what benefits, if any, are being provided by the offending use and whether the harm can be avoided if the activity were allowed to continue. The court will balance these factors as well as any other relevant evidence in order to resolve the issue.

If a nuisance is found to exist, the court has several options in deciding how to remedy the situation. These remedies include such options as money damages and/or an injunction. Money damages compensate a complaining landowner for the interference with the use and enjoyment of his/her property. An injunction is a court order ordering that the offending activity be stopped. If an activity is ordered stopped, the court may additionally award damages to the complaining party for the harm done before the activity was stopped. If the court allows the activity to continue, damages may be awarded to cover past and/or future injury. Most jurisdictions give courts wide latitude in determining whether an activity is a nuisance and what, if anything, should be done to remedy the situation. In some circumstances, farmers and ranchers have been required to move the offending activity away from the neighboring and offended party. Again, the Courts are given wide latitude in fashioning appropriate remedies.

The second type of activity that unreasonably interferes with another person's use and enjoyment of his/her property is called a "trespass." A trespass occurs when there is a physical invasion of the land of another without his/her permission. A common example of a trespass that arises from agricultural lands is the unauthorized invasion of wayward livestock onto another person's land.

A landowner is liable under the theory of trespass for any damage done as a result of the trespass. Most states have statutes that determine the amount of liability for straying livestock and the responsibilities of the livestock owner as well as the landowner upon whose property the livestock stray.

The third activity is the liability that arises from the violation of environmental regulations. Environmental regulations may be federal, state, or local regulations. The Clean Water Act, the Clean Air Act, the Endangered Species Act, the Federal Insecticide, Fungicide, and Rodenticide Act, and the Comprehensive Environmental Response, Compensation and Liability Act are but a few examples of environmental regulations from which a violation may result in landowner liability. Due to the complexities of environmental regulations, a full discussion of each environmental law relating to landowners will not be discussed in this module. Instead, the operation owner should consult with properly trained environmental advisors as well as state and local environmental regulatory officials to determine the scope and manner in which the environmental regulations affect the landowner and goat operation owner in their jurisdiction.

### ***Landowner liability insurance***

One way to mitigate the exposure to liability that one has as a landowner is to purchase landowner liability insurance. Though insurance varies by state and by insurance carrier, the basic premise behind landowner liability insurance is to minimize the exposure a landowner has to claims arising from his ownership of real property. When searching for landowner liability insurance make sure to understand the scope of the insurance, who is protected by the insurance, as well as the payment limits of the insurance. Close readings of available policies are absolutely necessary and the individual producer may have to spend a considerable amount of time in finding the right liability coverage to address their particular operation.

## **Contracts**

Contracts have become an everyday part of life for farmers and livestock producers. From mortgages and promissory notes to pasture leases and bill of sales, legal documents have permeated the agricultural world. A general understanding of these legal documents has become important in order to both protect yourself and know what rights and interests you are giving up or assigning to others. This section focuses on secured transactions and the Uniform Commercial Code, bill of sales, pasture and farm leases, and production contracts.

### ***Secured transactions and the Uniform Commercial Code***

Farmers and livestock producers have become increasingly dependent on creditors as a primary means of financing their land, machinery, crops, and livestock. For this reason, it is very important to have a basic knowledge of how these transactions work and of the rules that govern them. When loaning money to a farmer or livestock producer, the creditor will frequently take a security interest in something that the farmer owns. This security interest may be in the land, home, farm equipment and implements, livestock, crops, or any other property in which the farmer has an ownership interest. A secured transaction occurs when a creditor grants credit and

in return is given a security agreement that grants a security interest in property of the obligated party. The creditor who receives the benefit of the security agreement is the secured party and the party giving the interest is the obligor. The property in which the security interest attaches is referred to as collateral. If the obligor defaults on the loan and security agreement, the secured party may take possession of the collateral. If the obligor becomes bankrupt, the secured party may receive the collateral through the bankruptcy estate rather than receive only a portion of the estate after it is divided among all the obligor's creditors.

A secured transaction has two primary stages: attachment and perfection. Attachment occurs at the point in time when the security interest becomes enforceable against the obligor. This happens when value is given by the secured party to the obligor and the obligor has signed and delivered a security agreement to the secured party containing a detailed description of the collateral. Attachment can also occur if the secured party is given or takes physical possession of the collateral. Attachment does not require any additional steps such as the filing of the security agreement. Attachment happens instantly at the point value is exchanged for the security agreement.

The second stage is the perfection of the security interest. Perfection occurs at the point in time when 3 things have occurred: 1) the obligor signs a security agreement or the lender has collateral, 2) the obligor owns the collateral, and 3) value is exchanged. These can occur in any order. To have a perfected security interest under the Uniform Commercial Code (UCC), the secured party must file a UCC Financing Statement detailing the nature of the security interest and describing the collateral or the secured party must have physical possession of the collateral.

The basic rules concerning secured transactions are found in Article 9 of the Uniform Commercial Code. This section of the Uniform Commercial Code has been adopted by all fifty states and the District of Columbia. Though each state designates where the UCC Financing Statement should be filed, the basic form of the filing is uniform among the states. Each state has designated a central filing office so as not to have financing statements spread out across each of the counties or parishes of the state. Many states have designated that the Secretary of State shall be the office responsible for recording UCC Financing Statements. Other states have designated offices such as the Corporation Commission or the County Clerk in a central county as the office responsible for recording UCC Financing Statements.

Article 9 of the Uniform Commercial Code places the responsibility of determining the proper form of the filing and the proper place of filing of a security interest with the party filing the document. Article 9 states that a filing office may refuse to accept a record for filing only for certain specified reasons. The fact that a record is accepted for filing does not necessarily mean that the filing is effective for the purpose intended by the filer. If you have any questions regarding the filing of a UCC Financing Statement, you should seek legal advice to determine what should be filed and where it should be filed. [Attachment A](#) is a sample copy of a UCC Financing Statement. This form can also be found on-line in both PDF and document formats by searching for "UCC1 Financing Statement."

### ***Bill of sale***

A properly executed bill of sale is a legal document establishing the transfer of ownership of personal property, whether tangible or intangible, from one person or party to another. A bill of sale is a useful document because it evidences that value was given in exchange for the specific piece or pieces of personal property listed on the Bill of Sale better than a simple receipt. A bill of sale should include the legal names of both the buyer and the seller, the purchase price of goods sold, and the effective date of the sale. A bill of sale should be signed by the seller and generally should be notarized by a Notary Public. Though there is no uniform bill of sale, it is recommended that a bill of sale should include language verifying that the grantors are the lawful owners of the goods being sold, a detailed description of the property being sold, and an acknowledgment that there are no outstanding liens against the property.

A properly executed bill of sale will establish the effective date of the legal transfer of ownership of personal property listed in the document. This is important because it does not matter who has physical custody of the goods once the bill of sale is signed and executed. A bill of sale does not need to be filed or recorded with any government agency to be valid. The signing and execution of a bill of sale is prima facie evidence, meaning valid on its face, that money has been paid and that ownership of the property has been transferred.

A bill of sale protects both the buyer and the seller by setting out in detail the terms of the transaction. Without a bill of sale there is no documentation or legal proof as to specifically what, if any, goods were sold and the agreed price of those goods. A bill of sale should be executed when purchasing or selling, especially to a private party, of farm equipment, animals, implements, crops, etc. Further, a bill of sale should always be used when buying or selling livestock. A bill of sale for livestock that is registered, or that potentially can be registered, with a specific registry should include the specific information or registration number for each animal being sold. Many registries will require a bill of sale in order to show a transfer of ownership in their records. When purchasing registered animals you should contact the registry and determine whether there is any specific form they require for a bill of sale. A sample bill of sale is found in [Attachment B](#).

### ***Goat registration***

The subject of the registration of goats is difficult to address because there is no industry wide standard for registration. Instead, registration of specific breeds is governed by various associations which generally deal with a specific goat breed. Goat registration is strictly done on a voluntary basis and is not required by state or federal law. Though not mandatory, goat registration is of importance to those involved in the goat industry as a means of keeping track of breed bloodlines as well as keeping a central database of breeders and owners within the breed. In addition, registration gives an owner a means of identifying members of his herd in case they are lost or stolen. Each association has its own standards and procedures for registering animals with their association. Some associations recognize the registration of herds as well as individual goats. Most associations require information including registration number of the sire and dam as well as information about the person registering the animal. For information about

registration of a specific breed, please contact the association regarding standards and procedures, as well as costs, of registering your animals.

### *Pasture and farm leases*

Pasture and farm leases can be a very useful tool when beginning a farming or livestock operation. The leasing of farm and pasture land can also be a useful way for existing farming and livestock operations to increase their size and production without having the capital necessary to purchase new land outright. When leasing real property, first make sure that all terms of the lease are in writing. Though most states recognize that oral leases for land less than one year in length are legally enforceable, without the terms of the lease being in writing a court has no way of knowing the exact terms of the lease. The focus of this section will be on those clauses that are generally necessary for a fully detailed and legally enforceable lease. It is important to remember that contract law varies from state to state and that the following is only an informational overview and should not be relied upon to be legally enforceable in your state.

The first issue when negotiating a farm or pasture lease is the duration of the lease. A farming operation that is relying on the continued use of the leased land needs to find land where a multi-year lease can be agreed upon. The lease agreement should state an exact period of time that the lease is valid. The lease should have an identifiable ending point so as to avoid any confusion as to when it expires. Further, you might want to negotiate extensions to the lease. An example of a lease extension is to state that the lessor shall have the option at the end of the lease period to renew the lease for a specified period. It is common when negotiating lease extensions to also negotiate the future price for each extension of the lease. The critical issue is not to become dependent on leased land only to lose the land because the lease signed did not adequately protect your needs. By negotiating these issues up front, you can avoid leasing land where you will only be able to negotiate a short term lease if your intent is to lease for a long term.

The second item when negotiating a lease is the issue of compensation to be paid to the landowner. A little research about land values and lease prices before entering into negotiations will help you settle on a price that is fair and reasonable to both parties. Lease prices can be affected based on land location, lease duration, and availability of land in the area. In some circumstances the lease price can be tied to the production or crop yield of the leased land. This type of lease protects the person leasing the land by shielding them from loss in case of a bad production year. In addition to negotiating the amount of compensation for the land, you must also determine how that compensation will be paid. Pasture and farm leases can be paid annually, monthly, or any other way that is mutually agreeable to both parties. Many farmers and livestock producers prefer to set up the lease payments on an annual basis since their income is based on a production season instead of a regular monthly income.

An issue that does not legally affect the validity of the lease but which is important none the less is that of "leasehold improvements." Leasehold improvements are improvements to the land made by the tenant for the benefit of the tenant during the term of his or her lease of the property. Common examples of leasehold improvements include barns, fences, corrals, wells, and other permanent fixtures to the land which cannot easily be removed from the land when the lease term

is over. Improvements that are not fixed to the land, such as portable stalls, above ground water distribution systems, trailer homes, and electric fence systems, do not become attached to the land and remain the property of the tenant. Leasehold improvements, as a general rule, remain with the land at the end of the lease and become the property of the landowner. The time to discuss leasehold improvements with your landlord is during the initial negotiations and not after the signing of the lease. It is often in the best interest of a tenant to negotiate a long term lease for property where major leasehold improvements will be required in order to receive the anticipated benefit from the leased land. Additionally, it may be possible to negotiate a better lease price for the land if the landowner knows in advance that you intend to make significant improvements to his/her property.

Another issue that should be dealt with in negotiation is the issue of termination. Both parties should agree as to when and how the lease should be terminated and the requirements for notice of termination. Further, issues such as any acts of the tenant that would constitute a breach of lease, i.e., abandonment or failure to make lease payments in a timely fashion, should be discussed as well as the tenant's rights if the property should be transferred or condemned during the lease period. It is important to remember that the more issues that can be settled prior to the preparation and signing of the lease the easier a working tenant/landlord relationship can be established.

Once the negotiation of the lease terms is completed, either party can be charged with the responsibility of drawing up the lease. The lease must positively identify each party to the lease and include the legal description of the land subject to the lease. The lease must include all of the negotiated terms of the lease including duration, compensation, and any other terms that are relevant to the lease such as who is responsible for insuring the property. A more thorough and detailed lease will lead to less misunderstanding and confusion and less likelihood of the disputed issue ending up in court. A sample Pasture Lease can be found in [Attachment C](#).

### ***Production contracts***

Production contracts are a legally binding contract between a producer and processor by which a producer agrees to acquire, feed, and care for livestock until such time that the livestock is transported to the processor in exchange for a payment that has been set out in the production contract. Production contracts can be beneficial to both parties involved. A production contract is a way for a processor to insure a steady supply of goods or livestock of a consistent quality. It also allows a processor to be able to accurately budget the expense of the product or livestock being purchased and neutralize any negative consequences associated with the shifting market prices of the contracted product. Production contracts give a producer a guaranteed market for a specified amount of product or livestock. This allows a producer to more accurately budget the costs associated with the care and/or breeding of livestock in order to determine profitability and create an operating budget. One of the drawbacks to the producer is that he gives up a level of control in the operation of his business. The downside of production contracts for both parties is the loss of any advantage that could be received from favorable market price trends.

Production contracts are subject to strict legal requirements due to the fact that, like any contract, they can be written to disproportionately favor one party over the other. Generally, the processor enters into the negotiation process with the upper hand because it is the larger and more financially secure party to the production contract. It is for this reason that the Farm Security and Rural Investment Act of 2002 prohibits or negates production contract confidentiality clauses in certain instances for livestock and poultry producers. The act allows producers to discuss the details and terms of a production contract with legal advisers, state and federal agencies, accountants, lenders, or anybody else the producer chooses despite the existence of a confidentiality clause.

Though production contracts can be a valuable asset for livestock producers, it is of vital importance to understand each and every term of the production contract. Despite the fact that the laws surrounding production contracts are geared to even the playing field, it is still up to the individual producer to be familiar with the terms of the contract and not sign a contract that he/she is either not able to fulfill or that is written to favor the processor. The best way to determine if the contract is fair is to seek out legal advice before signing any production contracts.

## **Choosing a Business Entity**

Starting, owning, and operating a business can be time consuming and very overwhelming. When deciding issues such as the nature and location of the business it is easy to overlook the issue of choosing a business entity. There are several of factors that must go into choosing a type of business entity and it is important to understand the consequences associated with each type. Consulting with both an attorney and a Certified Public Accountant will allow you to make an informed and knowledgeable decision. Often, the tax implications for the producer will be the guiding or determining factor in identifying and deciding upon a proper business entity.

There are many different business entity types from which to choose with each type having associated benefits and drawbacks. Types of business entities include sole proprietorships, partnerships, limited liability companies, and corporations. This section will discuss each of these business entities in greater detail. Each state has requirements in its statutes for setting up businesses and filing appropriate records to reflect those businesses. The producer should check with the proper state authorities, usually the Secretary of State, to determine the filing and recognition requirements for businesses in his or her state.

### ***Sole proprietorship***

The easiest type of business entity to start operating is a sole proprietorship. A sole proprietorship is a business entity owned and managed by one person. The sole proprietorship can be organized very informally and is not subject to federal or state regulations regarding its formation. A sole proprietorship is indistinguishable from the person owning and controlling the company. Because the sole proprietorship is indistinguishable from the person owning the company, the owner is personally liable for all actions of the company. A sole proprietorship is taxed at the individual income tax rate of the owner. A sole proprietorship does not pay income

taxes separately from the owner. The benefit to operating a sole proprietorship is that there is no expense in creating and registering the business entity. In addition, there are no requirements regarding the management and control of a sole proprietorship. One drawback of a sole proprietorship is that it offers no liability protection to the owner. For example, if an owner of a sole proprietorship was sued as the result of an action that occurred while doing business as the sole proprietorship the owner could have money from a personal savings account garnished as a result of the lawsuit. Another drawback is that there are very few tax advantages for operating a sole proprietorship. The owner is subject to the federal self-employment tax which is often a substantially higher tax rate than that which other business entities are subjected.

### ***Partnership***

A partnership is created if two or more individuals agree to enter into a business arrangement. The agreement may either be in writing or may be oral. Though an oral partnership is legally enforceable it is always recommended that the partners define, in writing, the role that each individual performs and how the proceeds, assets, and debts of the partnership are distributed. Partnerships, like sole proprietorships, are generally not required to be registered with the state but in most states there are advantages for registering partnerships. A limited partnership is a type of partnership that requires registration with the state that limits the liability of the individual partners for actions taken by the partnership. Partnerships have the benefits of being relatively inexpensive to create and allowing individual partners to pool their resources and share control of the company. Drawbacks include personal liability, except in limited partnerships, and taxation at the individual income tax level.

### ***Limited liability company***

Limited liability companies, or LLC's, are business entities which share characteristics of both partnerships and corporations. LLC's limit the personal liability of members for obligations and/or actions of the company. LLC's are created by filing Articles of Organization with the state in which they are to be created. There are fees associated with the filing of the Articles of Organization. Generally, the Secretary of State is charged with the registration of business entities within a state. In addition to the Articles of Organization, most states require that an operating agreement be drawn up that establishes the members of the company as well as how the company is controlled and the duties of the members. LLC's are taxed in the same manner as sole proprietorships and partnerships. Profits and/or losses pass through the LLC and are taxed at the individual income tax level of each member. Since LLC's have not been in existence as long as some of the other forms of business entities, the Courts have not fully explored the various protections afforded by these entities. Again, proper legal and accountant advice is necessary in determining the form of business entity.

### ***Corporation***

Corporations are the most complex type of business entity. A corporation is created by filing Articles of Incorporation, or a similar document depending on the state, with the designated agency within the state. Corporations are governed by bylaws that state the purpose and nature

of the corporation, establish the rights of the shareholders, and name the directors and officers of the corporation. Corporations are owned by shareholders who own stock in the corporation. Corporations may be wholly owned by one person or may be traded publicly and owned by thousands of people. Many states have prohibitions against agricultural business being owned by corporations. Most states have exceptions to this rule where the corporation is owned by members of a family who are engaged in the operation of the farm. Corporations allow shareholders and officers to operate with limited liability for actions and/or obligations of the corporation. Corporations are generally taxed at both the corporate level and at the individual income tax level of the shareholders. Small corporations can often elect to be classified as an 'S' corporation. This means that taxes are not paid by the corporation and that the tax liability passes through the corporation and on to the shareholders.

## **Trademarks and Copyrights**

Name and product recognition are an important part of establishing and maintaining a successful business in our free market society. This rule is equally true for goat meat producers. Unless you have a long term production contract that guarantees a buyer for your product in advance, then you rely on the public's awareness of your product and your reputation in order to sell your product. Trademark and copyright laws encourage this by enabling you to protect your trademark and/or logo from others who might want to try to benefit from your name and reputation. The United States Patent and Trademark Office (USPTO) defines a trademark as "a word, phrase, symbol or design, or a combination of words, phrases, symbols or designs, that identifies and distinguishes the source of the goods of one party from those of others." Trademark registration of your logo is not required by either state or federal law. There are benefits, however, of registering your trademark with the USPTO. The primary benefit is that registering your Trademark with the USPTO allows you to establish nationwide ownership and control regarding the use of your registered logo. Trademark registration does not require the assistance of an attorney. The USPTO does suggest using an attorney if there are any questions regarding the complicated process of registering your trademark. Detailed information regarding the registration process is available at the USPTO website ([www.uspto.gov/main/trademarks.htm](http://www.uspto.gov/main/trademarks.htm)).

While registering your Trademark will protect your exclusive use of your logo or trademark, it may additionally be beneficial to copyright the logo as well. Copyright protection is different from trademark protection in that copyright protection is a form of protection grounded in the U.S. Constitution and granted by law for original works of authorship fixed in a tangible medium of expression. Copyright registration, like trademark registration, is not required by state or federal law and is not required to establish the existence of your copyright. Registration is required, though, before you can bring suit against a party for copyright infringement. Copyright registration is done through the United States Copyright Office. The United States Copyright Office is a department of the Library of Congress. Registration is relatively simple and does not require an attorney for completion. Detailed information regarding the registration process is available at the United States Copyright Office website ([www.copyright.gov](http://www.copyright.gov)).

## **Corporate Farming Laws**

Corporate farming laws, also referred to as anti-corporate farming laws, have become a common means by which state legislators have recognized the economic importance of the family farm and enacted legislation in order to preserve and protect the family farm from being driven out of business by large corporate farming operations. Nine states have enacted laws that prohibit or limit corporate farming. These states are South Dakota, North Dakota, Oklahoma, Iowa, Minnesota, Wisconsin, Nebraska, Missouri, and Kansas.

Though corporate farming laws vary from state to state, the general purpose of these laws is to place restrictions on corporate farming activities. Most of the states that have enacted these laws have set out exemptions to the general prohibition of corporate farming to allow family farm corporations. Generally, a family farm corporation is a corporation owned by members of a family engaged in the operation of a family farm. Some states require that at least one member of the family farm corporation must physically reside on the farm. In addition, most of these states allow banks to take ownership and control of farmland if the acquisition is done for the purpose of collecting a debt or enforcing a legal security interest.

## **Farming Cooperatives**

One issue that all independent farmers face is the question of how to consistently and effectively control the price they pay for the products and services necessary to operate their business as well as the price they receive for the goods which they produce. One common and effective way of controlling these prices is the formation of farming cooperatives or “Co-ops.” Farming cooperatives are legal business entities created under state law which are owned and operated for the purpose of benefiting those individuals who use its service. Farm cooperatives can serve a variety of functions including, but not limited to, providing loans to farmers, purchasing and selling supplies with greater bargaining power than that of the individual farmer, bargaining on behalf of its members, providing transportation services, and marketing agricultural products for its members. Farm cooperatives are formed by filing the legal documents required for incorporation in the home state of the cooperative. Laws regarding incorporation are different in each state so it is important to become familiar with the rules regarding incorporating in the state in which you reside. In addition to filing the necessary paperwork for incorporation, the cooperative must also adopt and ratify bylaws. Bylaws are the legally enforceable set of rules that establish the rights and obligations of the cooperative’s members. Bylaws further govern the election and duties of the board of directors of the cooperative. It is the board of directors that supervise and handle the business matters of the cooperative. Another important duty of the board of directors is to select the individual who will serve as the cooperative’s manager or chief executive officer.

One of the most important steps in the formation and operation of a farm cooperative is the acquisition of the startup capital necessary to achieve the business goals of the cooperative. There are many different ways to finance the establishment of a cooperative. Two common ways of financing a new farm cooperative are charging a membership fee to those individuals using and benefiting from the cooperative and by selling membership stock to those individuals

using and benefiting from the Cooperative. A good resource for information regarding rural development and farm cooperatives can be found at [www.rurdev.usda.gov](http://www.rurdev.usda.gov).

## **Labor Issues**

Most farm operations require assistance, at least from time to time, to complete the chores and tasks necessarily associated with the operation of the farm. This brings up the question of how to classify your “farm hands.” State and federal law require that anyone working on your farm be classified as either a “contract laborer” or an “employee.” Though each state can specifically define each of these relationships, the following is an overview of the nature and consequences of each of these classifications.

The first classification is that of contract laborer. A contract laborer is generally defined as someone:

- 1) over whom there is a limited level of direction or control;
- 2) who supplies his/her own equipment, material, and supplies;
- 3) who can be discharged at any time or choose not to come to work without fear of losing employment;
- 4) who controls his/her own hours of employment;
- 5) whose employment period will be for a temporary or limited period of time; and
- 6) who is not an integral part of the business.

As an employer, there are several advantages to having “contract laborers” rather than employees. The most attractive advantage to an employer is that you do not have to withhold federal, state, and Social Security (FICA) taxes, or pay unemployment or workers' compensation insurance for independent contractors. Contract laborers also do not receive benefits such as paid sick leave, vacation, health insurance, and retirement benefits. It is very important when hiring contract laborers that you are aware of the state and federal rules defining these relationships. If you classify someone as a “contract laborer” and the state and federal authorities disagree with your classification, you may be responsible for any state and federal taxes owed by that individual.

The second classification is that of employee. An employee is someone whose work is controlled by the employer and/or is an integral part of the business. Employers are required by the Internal Revenue Service to have each employee fill out a W9 form. This form is a request for taxpayer identification number and certification. This form requires each employee to certify under penalty of perjury that he has disclosed his correct social security or taxpayer identification number. As an employer, you will be responsible for withholding federal, state and Social Security (FICA) taxes, as well as responsible for carrying unemployment and workers' compensation insurance. Full time employees whose only source of income comes from their employment with you are generally going to be classified as employees and not contract laborers. If you have any questions regarding the classification of your farm hands, you should seek the advice of a Certified Public Accountant. A wrong classification can end up costing you a lot of time and money in the long run.

## **Bogus Check Collection**

Accepting personal checks is an important part of conducting business in the world we live in today. Businesses or producers refusing to accept personal checks place themselves at a distinct disadvantage and are turning away potential profits. Unfortunately, the price a business or producer pays for accepting personal checks can sometimes seem to outweigh the benefits. No business or producer is exempt from accepting payment for goods or services by means of bogus or counterfeit checks.

There are a few simple steps that can be taken while accepting the personal check that can help in collecting money in the unfortunate event that the check is returned unpaid. When dealing with personal checks, the most important rule to remember is to not accept third-party checks, payroll checks, or checks written for more than the amount of the purchase. These three types of checks are common schemes that counterfeiters and forgers use to try to pass bogus checks. Checks should only be accepted from a named party on the check. Always verify identification to make sure that the person writing the check is a named party on the check and compare the signature on the check to the signature on the identification. You should also verify that the information printed on the check is accurate and collect additional information for your protection. It is recommended to ask for the writer's home and business phone numbers. If the check does not have an address printed on its face you should get an address. In addition to the writer's name, address, and telephone number, it is also advised to get the writer's drivers license number, expiration of license, and date of birth. This information is helpful in the event that you must turn your check over to law enforcement to help collect payment.

Another item of which to be aware is the number of the check. Many law enforcement agencies advise that accepting checks on newly opened accounts has more risk associated with it than accepting checks on established accounts. Many businesses refuse to accept checks with a check number lower than 500 or 1000. When accepting personal checks written on a new account, it is advisable to ask to see two forms of identification and carefully review them to ensure that the information on the provided identification matches the person writing the check. Forgers and counterfeiters often have checking accounts under different aliases and identification to match each alias. The bottom line when accepting a personal check is to use good judgment and due diligence in determining if accepting the personal check is an acceptable risk. When in doubt as to the identity or character of the person presenting the personal check ask for an alternate means of payment.

No matter how careful you are in accepting personal checks, eventually you are going to receive a check back unpaid. The laws regarding the collection of returned checks are different from state to state and sometimes from county to county or city to city. Calling your local law enforcement agency is often a good way to find out what steps are legally acceptable in your community or state to collect a bogus check. Most jurisdictions will allow you to use the information collected at the time of accepting the check to contact the individual and ask them to take care of the bad check. If this is unsuccessful, you generally have three options available to try and collect on the bogus check. The first option is to hire a collection agency. This is often the most effective means of collecting a debt but it is also generally the most expensive. Most

collection agencies will take a fairly significant percentage of all monies that they collect on your behalf. The second option is to turn the check over to your local law enforcement agency. This is often a very slow way to try to collect a bogus check and can result in additional requirements on your part if you must testify in court regarding the check. The last option is to personally sue the writer of the check either in small claims court or in a general civil court. Filing a small claims case generally does not require an attorney but does require the payment of court filing fees and the payment of a process server. The downside to trying to collect a bogus check through a court case is that it is easier to get a judgment against an individual than it is to actually collect the money granted to you by that judgment.

## **Wills and Trusts**

What will happen to your farming operation after your death? This is a question that many people never take time to ask. If you were to die without a will or a trust this question would be answered by a judge who would be guided by state law. A Last Will and Testament or a trust agreement allows you to control what happens with your possessions when you pass. A Last Will and Testament is a legal document that directs the person you appoint as executor as to how you wish to dispose of all of your property. A Last Will and Testament differs from a trust agreement in that it disposes of all property you own or possess at the time of your death through a legal proceeding known as a probate. A probate is the legal action in which a judge determines the validity of your Last Will and Testament and authorizes your executor to distribute your possessions as directed by your Last Will and Testament. Though it is recommended to consult an attorney when preparing and executing a Last Will and Testament, almost all states will recognize a Last Will and Testament as being legally enforceable if it is: 1) written in your own handwriting; 2) dated; and 3) signed.

A trust agreement is a legal document by which ownership and control of all of your possessions is taken out of your name as an individual or a married couple and put into a trust estate in which you or you and your spouse are named as trustees. A trust agreement allows you, as a trustee, to control your possession in the same manner you did before creating the trust agreement. One benefit of a trust agreement is that a successor trustee can be named who takes over control of your trust estate after you die. This successor trustee can continue the operation of your business as if you were still operating it yourself. Court authorization is not required to change trustees and there is no need to go through the expense of hiring an attorney and filing a probate when the trustee(s) dies. A major difference between a Last Will and Testament and a trust agreement is that a trust agreement allows you to “control your assets from beyond the grave.” This means that your trust estate can continue to operate after your death just as it did before your passing. This is not possible with a Last Will and Testament. The laws that govern trust agreements differ from state to state and are very specific and complicated. Preparation and execution of a trust agreement should never be undertaken without the assistance of an attorney.

## Divorce

Though the subject of divorces and family law may not seem to have a direct impact on the operation of a goat farm, the consequences of a divorce can be devastating to the family farm. The basic premise behind a divorce is to split all assets and debts of a marriage evenly between the husband and wife. This is often easy to do if the only items to divide are the house, car, clothes, mortgage, and credit card debt. What happens when there is a farm, livestock, and the debt associated with that farm thrown into the mix? The equitable splitting of the land, legally known as real property, and personal possessions, legally known as personal property, becomes more complicated. In many situations, neither party will be able to retain the farm because there is no way to fairly and equitably divide the farm without selling it and dividing the proceeds.

The first issue to consider is how the farm land is owned and under what type of business arrangement the farm is being operated. If the actual land is: a) owned jointly by both parties; b) bought during the marriage; or c) lived on as the marital homestead, the law in most states will recognize that land or real property as being jointly owned by the parties. In these situations, the land is generally going to be considered marital property and not an asset of the business. Where the land is marital property, or jointly owned by the parties, the first order of business is determining how to equitably divide the assets, meaning both real and personal property.

Generally the parties begin the process of dividing the assets and debts by determining the equity, if any, that exists in the farm and its associated assets. In those situations where the debts and assets of the farm are equal to each other and there is no equity in the farm, then it is simply a matter of deciding who is going to get the farm and be responsible for those debts associated with the farm. The party not getting the farm and its associated debts will receive nothing in return because there is no actual value in the farm. In those situations where there is either equity and/or excessive debt built up in the farm, then it must be determined what the value, either negative or positive, of the equity is and how that value will be offset in favor of the parties. For example, if the farm has a positive equity of \$100,000, then the party not receiving the property would be entitled to half of that value. There are several ways that one-half of the equity can be paid to the other party. It can as a cash settlement, either paid in full at the time the divorce is granted or paid out in payments over a specified period of time. If the party keeping the farm pays the other party at the time the divorce is granted it often requires them to take out a mortgage against the property. Another way that the value could be given to the other party is by dividing the other assets of the marriage in such a way that the party not receiving the farm would be awarded not only their share of the property, but also additional property equaling half of the value of the equity in the farm. This is common where there are enough assets to make it a feasible solution.

In those situations where the farm is owned by a corporation or other business entity, the issue to be determined is ownership of the company and how to put a value on that ownership. If there is stock ownership in a company and that stock is determined to be an asset of the marriage, then the value of that stock should be equally divided between the parties. Because each state has its own laws regarding marriage and divorce, it is important to seek the advice of an experienced family law attorney when dealing with any issues arising from a divorce.

## **Pre-Nuptial Agreement**

One way to avoid problems caused by the division of property in a divorce is to sign a pre-nuptial agreement before getting married. A pre-nuptial agreement is a legally binding contract between a husband and wife that controls such things as assets brought into the marriage by either party, financial matters during the marriage, and the splitting of property in the event that the marriage should be terminated for any reason. Though many people think that pre-nuptial agreements take all of the romance out of a marriage, it is very important to discuss and disclose all financial matters prior to entering into a marriage. In the situation where one party has acquired assets such as a goat farm, it is in the best interest of both parties to discuss their role in the operation of the farm and what expectations they would have regarding the farming operation if the marriage was to be terminated and the property divided. A pre-nuptial agreement is the best way to ensure that the farm, no matter how big or small, does not have to be sold as a result of a divorce.

## **Bankruptcy**

When a farmer is unable to continue to pay the bills both arising from the operation of the farm as well as personal obligations, he/she may face pressure and harassment from creditors. The farmer may even be subject to legal action taken on the part of the creditors against the farmer. One way that a farmer can respond to this pressure and harassment is to seek protection under the United States Bankruptcy Code. The United States Bankruptcy Code allows debtors suffering from financial hardship to settle their obligations by petitioning a federal court and developing a plan to either reorganize their debt or divide their available non-exempt assets among their creditors. There are several different plans, known as Chapters, that allow debtors to receive this relief.

Chapter 7 of the U.S. Bankruptcy Code deals with the liquidation and distribution of the debtor's estate to his/her creditors. The bankruptcy code establishes a list of items which are exempt from being collected and liquidated as part of the bankruptcy. This list of exempted items varies from state to state but usually allows you to keep up to a certain amount of equity in your home, car, clothing, and home furnishings as well as many other necessary items. All possessions which are not exempt under the bankruptcy code are collected by a trustee appointed by the court and sold. The proceeds are then applied to the debts. Certain debts are not dischargeable in bankruptcy court. Debts that are not dischargeable include most taxes, school loans, child support, and alimony.

Chapter 11 of the U.S. Bankruptcy Code addresses the reorganization of the debts of a business. Under a Chapter 11 plan, a business debtor enters into an agreement with its creditors under which all or part of its business is allowed to continue. The debts of the business are restructured in such a way as to hopefully allow the business to successfully service its debts.

Chapter 12 of the U.S. Bankruptcy Code deals specifically with the adjustment of debts of a family farmer with regular annual income. Chapter 12 requires that for the tax year before filing, 50 percent of the debtor's gross income must come from farming while total debts must not

exceed \$3,237,000 and at least 50 percent of the debts must come from the farming operation. Closely-held entities, such as corporations or limited liability companies, are also eligible if one family owns more than 50 percent of the stock or equity, members of the family conduct the farming operation, more than 80 percent of its assets are related to the farming operation, and its debts do not exceed \$3,237,000. In addition, at least 50 percent of that debt must have arisen from the farming operation.

Once the bankruptcy case is filed, a trustee is appointed to help administer the case. The debtor, however, is entitled to remain in possession of the farm assets, subject to specific duties and can only be removed for cause. A meeting of creditors is held where the debtor is questioned by creditors and the trustee. The Chapter 12 debtor has ninety days from filing to propose a three- to five-year plan of reorganization. This plan must meet specific statutory requirements. For example, secured creditors generally are entitled to receive at least the value of their collateral and unsecured creditors must receive at least as much as they would receive under a Chapter 7 liquidation. All "disposable income" during the plan term is to be paid on unsecured debt. The plan must provide for full payment of priority debts. A bankruptcy judge will evaluate the debtor's plan at a confirmation hearing and, if the judge deems the plan feasible and in compliance with the Bankruptcy Code, it is confirmed. Upon completion of the plan the debtor is granted a discharge. In certain cases, a hardship discharge may be granted if the plan was not completed due to circumstances for which justice demands that the debtor not be held accountable.

Chapter 13 of the U.S. Bankruptcy Code deals with the reorganization of the debts of an individual. Under a Chapter 13 plan, the individual debtor proposes a plan which establishes how the debtor's obligations are going to be paid. This plan usually lasts for a period of between three and five years. During the pendency of the plan, the debtor will be protected against wage and property garnishments and may keep possession of all of his/her property. The proposed plan must be approved by the bankruptcy judge and the creditors are allowed to file and be heard regarding objections to the plan. Certain debts are not dischargeable under a Chapter 13 plan. These include debts whose original term of payment is longer than the time of the proposed repayment plan, alimony, and child support. Debts which were incurred after the filing of the bankruptcy petition and were not approved in advance by the bankruptcy trustee are also not dischargeable.

## **The Environment and the Clean Water Act**

The Clean Water Act, officially titled the Federal Water Pollution Control Act, 33 U.S. §§1251 - 1387, provides a comprehensive system for the regulation of pollutants in the waters of the United States with the objective of restoring and maintaining the chemical, physical, and biological integrity of the nation's waters. This act was originally adopted in 1948 and has been amended numerous times before arriving at its present form. The Environmental Protection Agency (EPA) is the primary federal agency assigned with the enforcement of the Clean Water Act. The EPA works in conjunction with state environmental agencies and the U.S. Army Corps of Engineers in regulating and enforcing the Clean Water Act. The Corps is involved more specifically in the wetlands portion of the act. Though the scope of the Clean Water Act is very

broad, the focus of this section is on that part of the act which most directly relates to livestock farmers and producers. This is the issue of water quality standards.

The Clean Water Act gives the states the authority to establish water quality standards for their waters. The EPA must approve all water quality standards and may promulgate water quality standards where no agreement can be reached with a state. The monitoring of bodies of water to determine if the water quality standards are being met is left up to the state. Monitoring water quality is done by taking random samples and using these results to generate statistical reports about the water quality of a body of water. The Clean Water Act requires that states send reports to the EPA detailing known information about bodies of water and a list of waters that do not meet their water quality standards.

The issue of whether or not livestock farms are directly subject to the Clean Water Act has been hotly debated over the past years with the outcome varying widely. Until recently, state law in California exempted farmers from the state's Clean Water Laws. Farmers and livestock producers were not required to apply for or receive permits even if their farm was directly connected to a body of water. Now, California farmers must cope with the added burden of complying with the act and going through the process of applying for and receiving necessary permits. Additionally, the 2<sup>nd</sup> Circuit U.S. Court of Appeals in New York recently ruled that a cow farm that does not discharge into a waterway cannot be needlessly made to comply with regulations under the guise of the EPA's Clean Water Act. The Court noted that farmers go to great lengths to protect the environment and found that there are effective regulations in place in the states and in the EPA to protect the quality of water. The bottom line when dealing with the Clean Water Act is to be familiar with the environmental rules and regulations governing the state in which one plans to operate.

### **The Packers and Stockyard Act**

The Packers and Stockyards Act is designed to maintain competition and integrity in the meat, livestock, and poultry industries. The Packers and Stockyards Act was originally passed in 1921 and has been updated and amended several times through the years. The last major amendment came in 1978. The act contains provisions banning unfair and deceptive business practices such as price discrimination, weight and grade manipulation of livestock or carcasses, commercial bribery, and misrepresentation of source, condition, or quality of livestock. The act gives the Secretary of Agriculture the authority to regulate livestock marketing activities at public stockyards and the operations of meat packers and live poultry dealers. In addition, the act authorizes the U.S. Department of Agriculture to regulate the rates of stockyard operators and market agencies at the stockyards.

Enforcement of the Packers and Stockyards Act is charged to the Grain Inspection, Packers, and Stockyards Administration. It is the mission of the administration to promote fair and competitive trading practices for the overall benefit of consumers and agricultural producers. Unfortunately, the Grain Inspection, Packers, and Stockyards Administration is regularly understaffed and criticized for not investigating and taking formal actions regarding complaints made as per the act. Further, the enforcement of the act is often challenging because it is

difficult to prove the existence of anti-competitive practices. Some states have enacted state legislation mirroring the federal act believing that it is easier to enforce these provisions at the state level rather than at the federal level.

One should be aware of who is and who is not subject to the act. For example, farmers and ranchers are not subject to the act when marketing their own livestock or when buying livestock for their own stocking or feeding purposes.

Livestock producers benefit from the act so it is important to understand the benefits afforded by the Packers and Stockyards Act. Livestock producers may file claims for reparations against stockyard operators, commission firms, auction markets, and dealers. If a consumer is harmed by a packer, the Packers and Stockyards Act provides for private civil actions by the harmed party against the offending party.

Another benefit that livestock producers receive from the Packers and Stockyards Act is the financial protection aspect of the act. Payment protection for the sellers of livestock is provided directly under the act by statutory requirement. Prompt payment for the purchase of livestock is an important element of the financial protection established by the act. Financial protection is further enforced by bonding requirements of a packer trust which provides protection to livestock producers who fail to receive payments from meat packers.

## **Urban Sprawl**

Every year in the United States thousands of acres of farmland and grazing pasture are lost due to urbanization and the growth of existing cities. This is often referred to as “urban sprawl.” The Merriam-Webster’s Dictionary defines urban sprawl as “the spreading of urban developments (as houses or shopping centers) on undeveloped land near a city.” Urban sprawl is a source of concern for farmers and livestock producers, as well as legislators, for several reasons. A primary concern is the increase in tension between farmers and livestock producers and their new urban neighbors. Farming and ranching operations are often seen as a nuisance when near urban areas because of the noise and odor pollution associated with these operations. In addition, stray animals from a livestock operation cause more concern when loose in a residential or commercial area than when loose in rural agricultural land. It is for reasons such as these that all states have enacted “right-to-farm” legislation protecting existing farming, ranching, and livestock production operations.

Right-to-farm legislation varies widely from state to state. Most states have given farmers and livestock producers legal protection from nuisance suits brought against them by individuals who choose to move into the area and then bring nuisance actions against the agricultural operation seeking to stop the operation. Many states have incorporated the common law defense of “coming to the nuisance” into the right-to-farm legislation and have made it an automatic defense to a nuisance suit. Most states recognize that in order to receive this protection a farmer or livestock producer must have been in business at his/her current location for a period longer than a year and must be in compliance with all local, state, and federal regulations governing the business operation. Some states have enacted right-to-farm legislation that creates agricultural

districts within the state. In these states, agricultural producers within the defined districts will receive the protection granted by the legislation. In this manner, legislators have been able to recognize a distinction between urban, commercial, and agricultural lands.

Another legal mechanism by which states protect agricultural lands is zoning. Zoning, which can be done at the state and/or local level of government, is a means by which to control the use of a given piece of land. In some states the zoning regulations dictate minimum land parcel size, limit permissible uses, and deter the sale of land for purposes other than agricultural use. These states generally allow uses such as farm labor housing, processing facilities, and marketing facilities so long as they are associated with the agricultural uses set forth in the zoning. Some states' and municipalities' zoning laws create mixed areas that remain substantially rural in character but include non-commercial farms and large-lot residential areas.

In addition to the legal mechanisms which physically restrict the use of land such as right-to-farm and zoning laws, various states have also enacted more subtle ways to encourage agricultural growth and prosperity. Nearly every state has passed laws which provide agricultural land with differential tax status or tax incentives. Many states have enacted legislation requiring local tax authorities to assess agricultural land based on the value of its present use rather than the value of its highest or best use. This is important because it prevents agricultural lands from being taxed in the same manner as residential or commercial property even if the property is in the same area. Some states provide agricultural producers with lower tax assessments if they agree to certain conditions such as not to develop their land for a specified period of time. These states are directly using tax incentives to preserve existing farmland and encourage new agricultural operations.

Some municipalities and cities have also begun combating the issue of urban sprawl. Besides the negative effect urbanization can have on agriculture, there is also a negative effect on the municipality or city. The more spread out a city becomes the more extensive and expensive it is to provide services such as water and sewer lines as well as the additional burden on police and fire services. Some cities and municipalities have fought this by creating urban growth boundaries. These boundaries clearly mark the parameter of the city or municipality and require new growth to take place within the boundary. Urban growth boundaries protect both the city and the rural agricultural lands surrounding it.

### **Pro Bono Legal Services**

Farmers and livestock producers, like everybody else, are not exempt from finding themselves in times of financial hardship or in need of legal advice and representation. In these situations it is beneficial to know effective ways to seek out sources of free or pro bono legal services. Pro bono legal services are available covering most legal issues. The American Bar Association and all state bar associations strongly encourage practicing attorneys to donate their time and services back to their community by way of performing pro bono services. There are several effective ways to locate a pro bono attorney. The first method that will be discussed is the use of the internet as a research tool for locating pro bono legal services. Before mentioning any specific sites or giving any web addresses, it must be stated that the authors do not intend to imply

sponsorship of or any association with the persons or entities who created these sites. These websites are provided as a starting point for your research and do not reflect all sources available.

A good resource to utilize when beginning your search is FarmLaw's resource page (<http://www.farmlaw.com/resources.html>). This website has a pro bono links section. Another agricultural law resource is the Farmers' Legal Action Group, Incorporated's web page (<http://www.flaginc.org>). Both of these websites link to the American Bar Association's (ABA) Center for Pro Bono and Public Services. The ABA's Center for Pro Bono and Public Services website has links to pro bono services available for each state in the country (<http://www.abanet.org/legalservices/probono/directory.html>). In addition to these sites, using search engines such as Google (<http://www.google.com>), DogPile (<http://www.dogpile.com>), and Yahoo (<http://www.yahoo.com>) can be another useful way to seek out information regarding potential pro bono legal services. When using search engines, it is useful to make your search as detailed as possible in order to return useful information. One very useful website is the National Agricultural Law Center ([www.nationalaglawcenter.org](http://www.nationalaglawcenter.org)). This website is divided into reading rooms on a variety of different subjects in which the producer can find links to various federal, state, and local laws, statutes, regulations, and court decisions on a wide variety of agricultural law topics.

Another way to search for pro bono legal services is to call your state bar association. The telephone numbers for your state bar association should be available by calling information. Most state bar associations are located in the capital city. State bar associations often have booklets or pamphlets containing useful information on available pro bono services as well as summaries and frequently asked questions about common areas of law. In addition, legal referral services available through the state bar association might be able to tell you what pro bono services are available in your state as well as any local bar chapters in your area. Make sure when you are discussing your matter with a prospective pro bono attorney that he fully understands your legal situation as well as your financial situation. This will be beneficial to both you and the attorney in determining whether he/she can help you with your legal issues.

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*Information contained in this document is part of a web-based training and certification program for meat goat producers (<http://www2.luresext.edu/goats/training/qa.html>) that was developed with funding received by Langston University from USDA/FSIS/OPHS project #FSIS-C-10-2004 entitled "Development of a Web-based Training and Certification Program for Meat Goat Producers."*

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