

10 Things to Know When Representing Farmers

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10 THINGS TO KNOW WHEN REPRESENTING FARMERS

I. FORMS OF FARM ORGANIZATIONS AND ENTITIES IN MINNESOTA.

A. Minnesota's Corporate Farm Law – Minnesota Statute Section 500.24.

1. The corporate Farm Law restricts the circumstances under which corporations and other limited liability entities can either (1) take an interest in agricultural land; or (2) engage in farming.
2. The law creates exemptions permitting certain types of entities to own land or engage in farming, such as Family Farm Corporations, Family Farm Partnerships, Authorized Farm Corporations, and Authorized Farm Partnerships.
3. The Corporate Farm Law has been controversial since its enactment in 1973.
4. The law underwent significant revisions in 1994, 1997, and in 2000.

B. Who can farm or own farmland in MN is limited to:

1. Sole Proprietorship
2. General Partnership
3. Family Farm
4. Family Farm Corporation
5. Family Farm Trust
6. Authorized Farm Corporation
7. Authorized Livestock Farm Corporation
8. Family Farm Partnership
9. Authorized Farm Partnership
10. Family Farm Limited Liability Company
11. Authorized Farm Limited Liability Company
12. Research or Experimental Farm
13. Breeding Stock Farm
14. Aquatic Farm
15. Religious Farm
16. Utility Corporation
17. Development Organization
18. Exempt Land (agricultural land owned or leased by a corporation prior to May 21, 1973)
19. Gifted Land
20. Repossessed Land
21. Nonprofit Corporation

22. De Minimis (an interest in 40 acres or less of agricultural land with less than \$150 per acre in gross revenue)
23. Commissioner's Exemption (does not meet the other exemptions, does not contradict purpose of corporate farm law, and does not have a significant impact on the agriculture industry)

C. **Sole Proprietorship.**

1. Advantages:
 - a) Ease of formation
 - b) Simplified ownership and management
 - c) Cost savings – no organizational or legal expense
 - d) Taxation simplified – individual
 - e) No regulation by the Minnesota Corporate Farm Statute – no reporting requirements or restrictions on the number of partners, acres, etc.
2. Disadvantages:
 - a) No liability shield – non-business assets at risk
 - b) Cumbersome transfer of ownership – piecemeal per asset v. shares or units
 - c) Unstructured succession – ownership and management coupled, but potentially unbalanced or without structure
 - d) Unintended partners – divorce, death – no buy/sell agreement
 - e) Potential multiple proprietorships without contractual agreements or succession plan

D. **General Partnership.**

1. Advantages:
 - a) Choice of level of formality (i.e., no written v documented agreement)
 - b) Ease of formation and low expense (if informal)
 - c) Simplified taxation – like individual proprietorship
 - d) Gradual transfer of the partnership interests to existing partners
 - e) No regulation by the Minnesota Corporate Farm Statute – no reporting requirements or restrictions on the number of partners, acres, etc.
 - f) Creditors of individuals cannot attack other partners' interests
 - g) Can be structured as a Limited Liability Partnership
 - h) Can provide liability protection if formalized
2. Disadvantages:
 - a) No liability shield if not formalized
 - b) Distributions and assets exposed to creditors of partnership
 - c) If informal, dispersed and unregulated management and control

- d) Partnership interests not easily divisible or transferable - May require unanimity if informal – no rules to regulate
- e) Unintended partners if informal – divorce, death – no buy/sell agreement

E. **Limited Partnership.**

1. Advantages:
 - a) Limited Partners have liability protection
 - b) Good succession transfer tool for farm and non-farm members
 - c) Legacy – keep the farm in the family
 - d) Structured transfers of interests
 - e) Management control – formalized – can maintain segregation of ownership of assets and distributions from management
 - f) Good tool for ownership of farm real estate
 - g) Avoid unintended partners with buy-sell agreements
2. Disadvantages:
 - a) Regulation under the Minnesota Corporate Farm Law
 - b) General Partners do not have liability protection unless Limited Liability Limited Partnership
 - c) Expense: filing requirements, initial and maintenance expenses for organization
 - d) Must maintain certain formalities to keep liability shield
 - e) Not suited well for farming business operations

F. **Limited Partnership: Corporate Farm Law Regulation.**

1. The majority of the interests in the partnership must be held by, and the majority of the partners must be:
 - a) Natural persons or current beneficiaries of one or more family farm trusts in which the trustee holds an interest in a family farm partnership, and
 - b) Related to each other within the third degree of kindred according to the rules of civil law.
2. At least one of the related persons must reside on the farm, or else the agricultural land must have been owned by one or more of the related persons for a period of five years before its transfer to the limited partnership.
3. None of the partners may be a corporation.
4. The entity must apply with the Commissioner of Agriculture and file an annual report.

G. **Farm Corporation (Family / Authorized / Livestock).**

1. Advantages:
 - a) Liability protection – shareholders, officers, directors
 - b) Formal management – shareholders, officers, directors
 - c) Separation of management (employees) from ownership (shareholders)
 - d) Well suited for farm operations
 - e) Avoid unintended partners with buy-sell agreements
 - f) Allows for non-farm owners
 - g) Succession and transfer simplified – shares v. assets
 - h) Keep control with majority ownership, voting agreements or distinctions in type of stock
2. Disadvantages:
 - a) Regulation under the Minnesota Corporate Farm Law
 - b) Not well suited for ownership of farmland
 - c) Expense: Filing requirements, initial and maintenance expenses for organization
 - d) Must maintain certain formalities to keep liability shield
 - e) Complexities imposed by formalities in management, ownership, succession, documentation

H. **Farm Corporation (Family / Authorized / Livestock): Corporate Farm Law Regulation.**

1. Family Farm Corporation
 - a) Majority of stockholders must be related to each other within third degree of kindred
 - b) Must have purpose of farming and the ownership of agricultural land
 - c) The majority of the stockholders must be persons, the spouses of persons, or current beneficiaries of one or more family farm trusts in which the trustee holds stock in a family farm corporation, related to each other within the third degree of kindred according to the rules of the civil law
 - d) At least one of the related persons must reside on or actively operate the farm
 - e) None of the stockholders may be corporations
 - f) The entity must apply with the Commissioner of Agriculture and file an annual report
2. Authorized Farm Corporation
 - a) Maximum of five shareholders
 - b) Corporation must meet the following standards:

- (1) it has no more than five shareholders, provided that for the purposes of this section, a husband and wife are considered one shareholder;
 - (2) all its shareholders, other than any estate, are natural persons or a family farm trust;
 - (3) it does not have more than one class of shares;
 - (4) its revenue from rent, royalties, dividends, interest, and annuities does not exceed 20 percent of its gross receipts;
 - (5) shareholders holding 51 percent or more of the interest in the corporation reside on the farm or are actively engaging in farming;
 - (6) it does not, directly or indirectly, own or otherwise have an interest in any title to more than 1,500 acres of agricultural land; and
 - (7) none of its shareholders are shareholders in other authorized farm corporations that directly or indirectly, in combination with the corporation, own more than 1,500 acres of agricultural land.
- c) The entity must apply with the Commissioner of Agriculture and file an annual report.

I. **Limited Liability Corporation (Family / Authorized).**

- 1. Advantages:
 - a) Liability protection – shareholders, officers, managers
 - b) Formal management - shareholders, officers, managers
 - c) Election for taxation as partnership (pass through) or corporation
 - d) Suited for ownership of farmland – if taxed as partnership
 - e) Restrictions on transfers to unintended partners with buy-sell agreements
 - f) Suited for farm operations in some instances
- 2. Disadvantages:
 - a) Regulation under the Minnesota Corporate Farm Law
 - b) Not well suited for ownership of farm land if taxed as corporation
 - c) Expense: Filing requirements, initial and maintenance expenses for organization
 - (1) Must maintain certain formalities to keep liability shield
 - d) Complexities imposed by formalities in management, ownership, succession, documentation

J. **Limited Liability Company (Family / Authorized): Corporate Farm Law Regulation.**

1. **Family Farm LLC**

- a) Majority of members must be related to each other within third degree of kindred
- b) Must be founded for the purpose of farming and the ownership of agricultural land
- c) The majority of the membership interests must be held by, and the majority of the members must be, natural persons or current beneficiaries of one or more family farm trusts in which the trustee holds an interest in a family farm limited liability company related to each other within the third degree of kindred according to the rules of the civil law
- d) At least one of the related persons must reside on the farm or actively operate the farm, or the agricultural land must have been owned by one or more of the related persons for a period of five years before its transfer to the limited liability company
- e) None of the members can be corporations or limited liability companies
- f) The entity must apply with the Commissioner of Agriculture and file an annual report

2. **Authorized Farm LLC**

- a) Maximum of five members
- b) LLC must meet the following standards:
 - (1) it has no more than five members;
 - (2) all its members, other than any estate, are natural persons or family farm trusts;
 - (3) it does not have more than one class of membership interests;
 - (4) its revenue from rent, royalties, dividends, interest, and annuities does not exceed 20 percent of its gross receipts;
 - (5) members holding 51 percent or more of both the governance rights and financial rights in the limited liability company reside on the farm or are actively engaged in farming;
 - (6) it does not, directly or indirectly, own or otherwise have an interest in any title to more than 1,500 acres of agricultural land; and
 - (7) none of its members are members in other authorized farm limited liability companies that directly or indirectly in combination with the authorized farm limited liability company own more than 1,500 acres of agricultural land.

- c) The entity must apply with the Commissioner of Agriculture and file an annual report.

K. **Family Farm Trust.**

- 1. Advantages:
 - a) Liability protection – settlor/trustee/beneficiaries
 - b) Separation of management and ownership from beneficial attributes
 - c) Protection of assets from creditors of beneficiaries
 - d) May afford favorable gift tax and estate planning opportunities
 - e) Allows for structured generational transition
 - f) Avoids probate
- 2. Disadvantages:
 - a) Expenses: preparation of trust and conveyance documents, recording/governmental fees, separate tax return, ongoing operational expenses
 - b) Potential adverse income tax treatment
 - c) Dealing with third parties may be cumbersome
 - d) Settlor may lose control/management of assets

II. **CHEMICAL APPLICATION.**

Modern agriculture takes advantage of a number of chemicals to control weeds and other pests, control disease, or boost soil nutrients. The use of these chemicals has become increasingly regulated in recent years, and the trend is likely to continue. The following are some of the most common laws and regulations producers need to be concerned with in their operation.

A. **Pesticide Applicator Licensing.**

Pesticides—which include chemicals to control insects, weeds, and fungus or other plant diseases—are regulated under both state and federal law. At the federal level, the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) is the primary law.¹ Among other things FIFRA requires the EPA to classify all pesticides as either “unclassified use” or “restricted-use.” Restricted use pesticides are those that might have a harmful effect on human health or the environment or those that have a history of misuse; restricted-use pesticides are not available for use by the general public. One of the most common restricted-use pesticides in agriculture is atrazine, a herbicide often used in corn and sorghum.

In Minnesota, various pesticide control laws, codified at Chapter 18B of Minnesota Statutes regulate pesticides at a state level. Minnesota law (and federal law) require that restricted use pesticides may only be sold to or used by a certified applicator.² An individual

¹ 7 U.S.C. §§ 136 *et seq.*

² Minn. Stat. §§ 18B.34, 18B.36.

farmer may obtain a private applicator certification by participating in a three-hour minimum training course, pass a test, and pay a \$10 application fee.³ In general, a private applicator may only apply restricted use pesticides on land owned or rented by the applicator. To apply restricted use pesticides on land owned or rented by others, an applicator typically will need a commercial applicator license.

Apart from licensing or certification, farmers applying pesticides to their crops must read and follow the pesticide labels. Labels for regulated pesticides are approved by the EPA and are uniform throughout the country. Using pesticides in a manner inconsistent with the label can result in federal and state criminal and civil penalties, and potential civil liability if improper use causes damage to a neighbor's crop or otherwise causes injury.

B. **Manure Management Plans.**

Livestock producers, regardless of whether they also cultivate land as part of their operation, generally must follow special regulations which govern the disposal of manure. In general if a feedlot houses more than 300 animal units, the producer must have in place a manure management plan, also known as a nutrient management plan.⁴ In essence, the purpose of a manure management plan is to ensure manure from livestock operations is not over-applied, minimizing runoff and excess nutrients entering groundwater or surface water.

A manure management plan consist of several components. First, the manure management plan describe the manure handling and containment system and the annual amount of manure expected to be produced by the feedlot.⁵ The plan must describe the amount of land available for application, manure application rates, and expected nitrogen and phosphorus content after application.⁶ In addition, the plan must also account for management around sensitive areas, such as near streams, around intakes, or in sinkhole-prone areas.

C. **Proposed Nitrogen Fertilizer Rule:**

New regulations regarding the application of all nitrogen fertilizer have been proposed by the Minnesota Department of Agriculture.⁷ Aimed at protecting groundwater, the biggest change is that it restricts fall application of nitrogen fertilizers in “vulnerable groundwater areas” or the application of fertilizers on frozen soil in those vulnerable groundwater areas. The vulnerable groundwater areas are those particularly sensitive to surface nutrients leaching into the groundwater supply.

In addition, the proposed nitrogen rule would require the implementation of certain best management practices where there have been elevated nitrogen or nitrate readings in private wells. These best management practices are intended to mitigate issues with nitrates in groundwater supplies.

³ Minn. Stat. § 18B.36.

⁴ Minn. R. § 7022.2225.

⁵ Minn. R. § 7022.2225 subp. 4(D)(1).

⁶ Minn. R. § 7022.2225 subp. 4(D).

⁷ <http://www.mda.state.mn.us/~media/Files/chemicals/nfmp/nitrogenfertrule17.pdf>

III. **GOVERNMENT FARM PROGRAMS.**

The federal government has created a host of programs related to the agricultural industry. Some of these programs aim to improve financial prospects for agricultural producers, and others relate to goals of environmental conservation. Many of these programs are implemented by the Farm Services Agency, a part of the United States Department of Agriculture.

A. **Crop Insurance.**

Crop insurance is probably the most common government program used by nearly all crop farmers. Insurance for droughts, floods, frost, and other natural disasters is purchased by farmers from private companies. The policies themselves are underwritten by the Risk Management Agency, a governmental entity.

Crop insurance, like other insurance policies, insures against an unexpected loss. Generally, producers will supply ten years of production history for a given field and an average of that production will be used as a baseline for the insured crop year. A farmer may purchase different levels of insurance, from 50 to 85 percent of the actual production history. If the actual yield does not reach the insured level, the farmer will receive insurance payments to account for the difference. Traditionally, crop insurance provided protection against poor yields; today, “revenue protection” coverage can also protect against price declines as well.

B. **CRP.**

The Conservation Reserve Program (CRP) is undoubtedly the most popular environmental program offered by the USDA. CRP is a land conservation program that encourages farmers to protect environmentally sensitive land by making annual rental payments to the farmer in exchange for the farmer agreeing not to cultivate certain areas. Typically CRP contracts last 10-15 years. The aim of the program is to improve water quality and protect wildlife habitat; to that end, CRP focuses on farmland near water, and farmland that may make good habitat for wildlife such as bees, pollinators, water fowl, and other game animals.

The Conservation Reserve Enhancement Program (CREP) and Continuous CRP are offshoots of the CRP program and aim to establish more permanent environmental improvements. For example, part of the CREP program requires that participants establish permanent resource conserving plants.

C. **EQIP.**

The Environmental Quality Incentives Program (EQIP) is a conservation program administered by the Natural Resources Conservation Service, an arm of USDA. EQIP provides both technical guidance and financial assistance to farms who implement

conservation practices that improve soil, water, and other natural resources. Practices that could be used as part of the EQIP program include no-till or minimum-till farming practices, planting cover crops, and similar activities. Farmers enrolled in the EQIP program work with NRCS to determine best management practices and receive payments of up to \$20,000 per year to defray the costs of implementing those conservation practices.

D. **CCC Loans.**

Producers can obtain loans from the Commodity Credit Corporation by pledging grain or other commodities as collateral for the loan. Farmers often use these loans as a temporary financing measure to receive some cash flow at harvest time without having to sell commodities for a depressed market price. CCC loans thus allow farmers to market their products throughout the year. CCC Loans can be either recourse or non-recourse; in non-recourse loans, the farmer has the option of delivering the pledged collateral to the CCC as a repayment for the outstanding loan.

E. **Rural Development Loans.**

Rural development loans describe a wide variety of loan programs focused on economic development in rural areas. Many of these loans are made by private lenders and guaranteed by the federal government in case of default. Probably the most common loan program is the Single Family Housing Guaranteed Loan Program. This loan program allows borrowers to obtain a loan for 100% of the purchase price of a home (i.e., zero percent down) located in a rural area, which is generally in or around any town with less than 35,000 people.

IV. **REAL ESTATE – MINNESOTA LIVESTOCK FACILITY PERMITTING ISSUES.**

Any client with livestock facilities based in Minnesota will be required to obtain a number of livestock facility permits and comply with applicable laws and regulations.⁸ There are several types of permits that a client with livestock facilities based in Minnesota *must* obtain from certain federal, state, and local government agencies. This topic will focus on five main livestock permits, namely:

- (A) National Pollutant Discharge Elimination System (“NPDES”) Permits;
- (B) State Disposal System (“SDS”) Permits;
- (C) Interim Permits & Construction Short-Form Permits;
- (D) Conditional Use/County Livestock Permits; and
- (E) Water Appropriation Permits.⁹

⁸ This topic applies only to Minnesota facilities. Other states may have different laws/regulations pertaining to specific permits that a producer may be required to obtain.

⁹ A brief overview of some of the most-common types of livestock permits that clients with Minnesota livestock facilities may need to obtain to operate animal feedlots. This topic does *not* cover the exhaustive set of situations where such permits may be required.

A. **NPDES Permits.**

NPDES permits are required pursuant to the federal Clean Water Act (“Act”).¹⁰ The Act generally prohibits the discharge of any pollutant from any “point source” into navigable waters of the United States except when authorized by a NPDES permit. An NPDES permit is required for the construction and operation of animal feedlots capable of holding 1,000 or more animal units if said animal feedlot discharges into waters of the United States. Although NPDES permits are required pursuant to federal law, these permits are *issued* by the State of Minnesota. NPDES permits are issued for a five-year term.

B. **SDS Permits.**

SDS permits¹¹ are generally required for certain animal feedlots that are not covered by an NPDES permit. Specifically, if an animal feedlot capable of holding 1,000 or more animal units does *not* discharge into waters of the United States, then this animal feedlot must obtain an SDS permit if it does not obtain an NPDES permit. SDS permits are issued by the State of Minnesota for a ten-year term.

C. **Interim Permits and Construction Short-Form Permits.**

Interim permits¹² and Construction Short-Form permits¹³ are required for those animal feedlots that are being constructed or are in the process of expanding, which are capable of holding 300-999 animal units. Interim permits and Construction Short-Form permits are both issued by the State of Minnesota.

D. **Conditional Use/County Livestock Permits.**

Most counties also require some type of conditional use¹⁴/feedlot permit to operate animal feedlots. It is important that clients are aware of any applicable county ordinances that may require producers/operators to obtain conditional use/county livestock permits. In addition, clients should also be aware that some townships also require conditional use permits to operate animal feedlots.

E. **Water Appropriation Permits.**

These permits are issued by the Minnesota Department of Natural Resources (“DNR”). Of the five types of livestock permits identified in this topic, this permit is probably the least likely to be obtained by most agricultural producers.

¹⁰ See 33 U.S.C. §§ 1251, *et seq.*

¹¹ See Minn. R. 7020.0300, subp. 24.

¹² See Minn. R. 7020.0300, subp. 13.

¹³ See Minn. R. 7020.0300, subp. 8(a).

¹⁴ See Minn. Stat. § 462.3595.

V. ESTATE AND SUCCESSION PLANNING ISSUES.

Successful succession planning is a critical part of any farmer's plan to maintain, sustain, and grow their farm business. Knowing the current "lay of the land" with respect to federal and state estate and gift taxes, exclusions, and deductions is critical to planning the future of a farming business intended to survive over multiple generations. Here is a very condensed and general overview of the current state of federal and Minnesota estate and gift taxes as they apply to farming operations.

A. Current Federal Estate Tax.

1. Each person gets a lifetime exclusion from gift and estate tax—meaning that only the amount over the "limit" is taxed \$5.49 million/person
 - a) Indexed for inflation
2. You can use your lifetime exclusion on lifetime gifts, passing property at your death, or a combination of the two
 - a) Gifts to charity and lifetime gifts of \$14,000/year or less per person don't count towards the lifetime limit
3. If you don't use your full exemption, you can "leave it" to your surviving spouse ("DSUE")
4. Takeaway: Married couple can leave just under \$11 million with no Federal Estate Tax with very little planning
5. BUT: Estate Tax Rate: 40%

B. Current Minnesota Estate Tax.

1. Each estate gets an exclusion from estate tax—meaning that only the amount over the "limit" is taxed
 - a) Today: \$1.8 million/person
 - b) 2018 and beyond: \$2.0 million/person
2. Plus, Qualified Farm Property and/or Small Business Deductions
 - a) Today: \$3.2 million/person
 - b) 2018 and beyond: \$3.0 million/person
3. Minnesota does **not** tax (most) lifetime gifts
 - a) Only property passing at death (with one important exception) is subject to tax
4. Takeaway: "Basic" Exclusion + Maximum Qualified Farm Property/Small Business Deduction = Maximum of \$5 million can pass free of Estate Tax (married couple can pass \$10 million with a little more planning)
5. Tax Rate: 10-16%, based on the size of the estate

C. **Calculating Minnesota Estate Tax.**

As the basic exclusion amount changes, the “brackets” for each estate tax rate shift, until final scheme goes into effect in 2018:

Amount of Minnesota Taxable Estate	Tax Rate
< or = \$2,000,000	0
>\$2,000,000 but < or = \$2,600,000	10% of excess over \$2,000,000
>\$2,600,000 but < or = \$7,100,000	\$60,000 + 13% of excess over \$2,600,000
>\$7,100,000 but < or = \$8,100,000	\$645,000 + 13.6% of excess over \$7,100,000
>\$8,100,000 but < or = \$9,100,000	\$786,000 + 14.4% of excess over \$8,100,000
>\$9,100,000 but < or = \$10,100,000	\$925,000 + 15.2% of excess over \$9,100,000
\$10,100,000 or more	\$1,077,000 + 16% of excess over \$10,100,000

D. **Qualified Small Business and Farm Property Deductions.**

1. In addition to basic exclusion
2. A single estate can claim both the qualified small business *and* qualified farm property deduction, but combined deduction is limited to \$3 million (in 2018)
3. First enacted in 2011, with substantial drafting issues that limited its applicability
4. amendments fixing many of these issues are retroactive to all decedents dying after June 30, 2011
5. Still lots of problems
6. For either deduction, person who acquires the property must be a “qualified heir”
7. “Qualified Heir” = “Family Member” of decedent (as defined in IRC Sec. 2032A(e)(2)) OR a trust whose current beneficiaries are all “family members”
 - a) “Family Member” means Decedent’s:
 - Ancestor
 - Spouse
 - Lineal descendant (or his/her spouse)
 - Decedent’s spouse’s lineal descendant (or his/her spouse) [step-children, step-grandchildren]
 - Decedent’s parent’s lineal descendant (or his/her spouse) [siblings, nieces/nephews]

E. **Qualified Small Business Property Deduction.**

1. “Small” = gross sales for year preceding death must be \$10M or less
2. It is not as easy as it looks to use because of material participation requirements
 - a) Particularly: the trade or business must not be a “passive activity” under IRC 496(c) during year preceding decedent’s death or the three years after death; the decedent or spouse must have materially participated in the Trade or Business in the year prior to the decedent’s death; and a family member must materially participate in the three years after death
 - b) NOTE: “Material participation” does NOT include substitute forms of material participation (i.e., retired person or surviving spouse) allowed under IRC § 469(h)(3)
3. Takeaway—to get Qualified Small Business Property Deduction, you have to “die with your boots on”

F. **Qualified Small Business Property Deduction Requirements.**

1. Included in the federal adjusted taxable estate.
2. An asset of a trade or business, or an ownership interest in a business entity engaged in a trade or business
3. Trade or Business not a “passive activity” under IRC 496(c) during year preceding decedent’s death
4. Decedent or decedent’s spouse materially participated in trade/business during that year
5. Business’s gross annual sales for that year $\leq \$10,000,000$
6. Not cash, a cash equivalent, publicly traded security, or an asset not used in the operation of the trade or business
7. Decedent owned the property for three years before his or her death
8. A family member materially participates in the trade/business for three years after the decedent’s death, and the trade or business is not a passive activity during those years.
9. Estate and qualified heir elect deduction, and qualified heir agrees to pay recapture tax if he or a family member fail to use the property in a trade or business for subsequent three years

G. **Qualified Farm Property Deduction.**

1. Much easier to get than the Small Business Deduction, but still difficult for many operations.
2. Qualifying Property must be:
 - a) Included in the federal adjusted taxable estate.
 - b) Agricultural land owned by a person or entity which complies with Corporate Farm Law

- c) In the 3 years preceding decedent's death, property was classified as:
 - (1) Class 2a property under section 273.13, Subd. 23, and
 - (2) Agricultural homestead, agricultural relative homestead, or special agricultural homestead under section 273.124
 - (3) NOTE: Not as easy as it looks!
- 3. Decedent owned the land for 3 years before his or her death (including property deemed "owned" by the decedent under IRC §§ 2036 [transfer with retained life estate], 2037 [transfer taking effect at death], or 2038 [revocable transfers]), and includes indirect ownership of land via an entity.
- 4. Land remains classified as Class 2a property for property tax purposes for three years following the date of death.
- 5. Estate and qualified heir elect deduction, and qualified heir agrees to pay recapture tax if land fails to stay Class 2a for following 3 years

H. **New Law.**

Minnesota is one of 17 states, plus the District of Columbia, with a state estate or inheritance tax as of 2017. In recent years, many states have repealed their estate taxes or raised exemptions. In the 2017 Regular Session, Minnesota followed that trend, raising the exemption for estates of persons dying in 2017 and increasing the amount of property that can pass free of Minnesota Estate Tax over the next three years.

Year of Death	Old Law	New Law
2017	\$1.8 Million Basic Exemption Tax Rate 10%-16%	\$2.1 Million Basic Exemption Tax Rate 12%-16%
2018	\$2.0 Million Basic Exemption Tax Rate 10%-16%	\$2.4 Million Basic Exemption Tax Rate 13%-16%
2019	\$2.0 Million Basic Exemption Tax Rate 10%-16%	\$2.7 Million Basic Exemption Tax Rate 13%-16%
2020	\$2.0 Million Basic Exemption Tax Rate 10%-16%	\$3.0 Million Basic Exemption Tax Rate 13%-16%

The Omnibus Tax Bill also made technical changes to the Qualified Farm Property Deduction. This deduction is an additional Minnesota Estate Tax exemption available for qualifying homesteaded agricultural property. To be eligible, the land must be inherited by family members who agree to keep the land in agricultural production, whether by farming it themselves or renting to a non-family member. The heirs must also agree not to sell the land outside the family for three years after the decedent's death.

The new changes to the law make it clear that families will not lose the deduction if a governmental entity forces a sale of the land, or if the county assessor re-classifies less than 20% of the land as woodlands or waste during the three-year period.

I. **Controversy.**

The Legislature passed the Omnibus Tax Bill very late in the Regular Session. The final Bill dictated that Minnesota Revenue would be de-funded in 2018 and 2019 if the Governor vetoed the Bill. In response, the Governor allowed the Tax Bill to pass without his signature, but line-item vetoed the Legislature's budget and refused to call a special session unless the Legislature agreed to undo certain provisions of the Tax Bill and another bill. One of the disputed provisions is the increases to the Minnesota Estate Tax exemption.

The Legislature sued the Governor, arguing his use of the line-item veto in this manner violated the Minnesota Constitution. A District Court judge ruled against the Governor, who appealed to the Minnesota Supreme Court. In an order issued on September 8, 2017, the Supreme Court determined that the line-item veto was constitutional, but questioned whether the result—the lack of a functioning legislative branch—might be unconstitutional. The Court ordered the Governor and Legislature to mediate their dispute and to provide the Court with more legal arguments and information regarding how to legally fund the Legislature if the Governor's veto stands.

J. **Takeaway.**

The ultimate fate of the recent changes to Minnesota Estate Tax is tied to the Minnesota Supreme Court's decision on the Governor's line-item veto of the Legislature's funding. The Court's order to mediate essentially requires the Governor and Legislature to come back to the bargaining table on the Tax Bill. However, because the changes to the Minnesota Estate Tax are effective retroactively, for estates of persons dying January 1, 2017 or later, at least parts of law would be difficult to repeal.

VI. **FARMER LENDER MEDIATION.**

In the early 1980s, the rural economy suffered a significant economic recession. Low farm commodity prices, continuing high interest rates, and reduced net farm income adversely affected farmers and all other business in rural communities. In response to these depressed farm conditions, the Minnesota Legislature enacted the Farmer-Lender Mediation Act (the "Act") in an effort to provide an orderly, state-assisted process to adjust agricultural indebtedness in order to prevent civil unrest and preserve the general welfare and fiscal integrity of the state Minn. Stat. § 583.21.

The Act is codified at Minn. Stat. § 583.20, et. seq.

Mediation is mandatory under the Farmer-Lender Mediation Act if each of the following requirements is present:

- (1) A collection action will be commenced against agricultural property.
- (2) The party commencing the collection action is a creditor within the scope of the Act;
- (3) The debtor is within the scope of the Act; and
- (4) The debt is within the scope of the Act.

(Minn. Stat. § 583.26, Subd. 1.)

- a) Mediation is mandatory before a creditor may initiate any of the following **collection proceedings** to enforce a debt against agricultural property:
- (1) Foreclosure of a Mortgage on agricultural property if the debt secured is more than \$15,000.00 (**effective** 8/1/17) (Minn. Stat. § 582.039, Subd. 1);
 - (2) Enforcement of a security interest in agricultural property under Article 9 of the Uniform Commercial Code if the debt secured is more than \$15,000.00 (**effective** 8/1/17) (Minn. Stat. § 336.9-601(h));
 - (3) Termination of a contract for deed to purchase agricultural property if the remaining balance on the contract is more than \$15,000.00 (**effective** 8/1/17) (Minn. Stat. § 559.209, Subd. 1).
 - (4) Attachment of, execution on, levy on, or seizure of agricultural property if the debt secured is more than \$15,000.00 (**effective** 8/1/17) (Minn. Stat. § 550.365, Subd. 1); or

Effective August 1, 2017, the minimum eligible debt amount is \$15,000.00. Beginning in 2022 and every five years thereafter, the Commissioner of Agriculture, in consultation with the Director, must report to the Legislature as to what the minimum eligible debt amount would be if adjusted using USDA's index of the cost of production.

A. **Mediation Notice.**

A creditor commences the mediation process by serving the applicable mediation notice on the debtor through any of the following methods:

1. Personal service;
2. Service by certified mail (restricted delivery)
3. Actual delivery with a signed receipt; or
4. If unsuccessful attempt is made, service may be made by mail to the debtor's last known address, but must include a certificate of mailing.

The mediation notice must also be filed with the Director of the Minnesota Extension Service within 3 days of service on the debtor.

B. **Mediation Request.**

A debtor must file a mediation request form with the Director of the Minnesota Extension Service within 14 days after service of a mediation notice.

The mediation request must identify:

1. All known creditors with debts secured by agricultural property.
2. All unsecured creditors who are necessary (in the debtor's discretion) for the farm operation; Mediation Request form must notify the debtor

that omission of a significant unsecured creditor could result in a bad faith determination. **Effective 8/1/17.**

3. The debtor must authorize the director to obtain the debtor's credit report from one or more credit reporting agencies. **Effective 8/1/17.**
4. A mediation request may be withdrawn by a debtor in writing at any time within 14 days of service of the mediation notice. A debtor who withdraws a mediation request may re-file a request within the original 14-day period.

C. **Failure to Request Mediation.**

1. If a debtor fails to file a timely mediation request or withdraws a mediation request, the debtor waives the right to mediation "for that debt" under the FLM.
2. The Director of the Minnesota Extension Service must send a Notice of Debtor Failure to Request Mediation to both the debtor and the creditor within 20 days after service of the mediation notice.
3. If a waiver is issued, the creditor has 60 days to commence an action. If creditor waits beyond 60 days, FLM must be offered again.

D. **Termination of Mediation / Agreement.**

1. If an agreement is reached during mediation, the agreement will be binding upon the debtor, creditors who approved the agreement, and creditors who filed claim forms and failed to object to the agreement.
2. Any mediation agreement must be enforced by the district court. Minn. Stat. § 583.31.

VII. **FORECLOSURE OF AGRICULTURAL REAL ESTATE**

A. **Calculation of Redemption Period.**

Typically, for agricultural land, the debtor will have a twelve (12) month redemption period after the mortgage is foreclosed in certain cases such as:

1. The amount claimed to be due and owing as of the date of the notice of foreclosure sales is less than $66\frac{2}{3}$ percent of the original principal amount secured by the mortgage;
2. The mortgage was executed prior to July 1, 1987, and the mortgaged premises, as of the date of the execution of the mortgage, exceeded ten acres in size;
3. The mortgage was executed prior to August 1, 1994, and the mortgaged premises, as of the date of the execution of the mortgage, exceeded 10 acres but did not exceed 40 acres in size and was in agricultural use as defined in section 40A.02, subdivision 3;

4. The mortgage premises, as of the date of the execution of the mortgage, exceeded 40 acres in size;
5. The mortgage was executed on or after August 1, 1994, and the mortgaged premises, as of the date of the execution of the mortgage exceeded 10 acres but did not exceed 40 acres in size and was in agricultural use.
6. For purposes of this clause, “in agricultural use” means that at least a portion of the mortgaged premises was classified for ad valorem tax purposes as:
 - o Class 2a agricultural homestead property under section 273.13, subdivision 23;
 - o Class 2b rural or agricultural non-homestead property under section 273.13, subdivision 23;
 - o Class 1b agricultural homestead property under section 273.13, subdivision 22;
 - o Exempt wetlands under section 272.02, subdivision 11.

B. **Deficiency Judgment.**

1. Deficiency
 - a) Generally, a deficiency judgment is not allowed if a mortgage is foreclosed by advertisement under Chapter 580 and has a redemption period of six (6) months. See Minn. Stat. § 582.30, Subd. 2.
2. Deficiency for Agricultural Property with mortgage after March 22, 1986
 - a) If a mortgage is entered into after March 22, 1986, on property used in agricultural production and is foreclosed by advertisement and sold, a deficiency judgment may only be obtained by filing an action for a deficiency judgment and a determination of the fair market value of the property within ninety (90) days after the foreclosure sale. See Minn. Stat. § 582.30, Subd. 3.
 - b) If an action is initiated, all issues of fact, including the determination of the fair market value of the property, should be tried by a jury (unless waived by Minnesota district court rules).
 - c) The court may allow a deficiency judgment only if it determines that the sale of the property was conducted in a commercially reasonable manner.
3. Limitation of Deficiency
 - a) The amount of deficiency is limited to the difference of the fair market value of the property, and the amount remaining unpaid

on the mortgage (by advertisement) or the amount of the judgment (by action).

- b) The property may not be presumed to be sold for its fair market value.
- c) The deficiency judgment or personal judgment obtained to enforce a mortgage debt on property used in agricultural production may be enforced by execution, but may not be executed after three (3) years from the date judgment was entered. See Minn. Stat. § 582.30, Subd. 7.

VIII. **RIGHT OF FIRST REFUSAL OF AGRICULTURAL LAND.**

Once a foreclosure has been completed on agricultural land, the immediately preceding former owner has a statutory Right of First Refusal to lease and/or purchase the property. This Act is codified at Minn. Stat. § 500.245.

Minnesota law requires a lender who purchases agricultural land at the foreclosure sale to offer the foreclosed agricultural land to the immediately preceding former owner before selling or leasing the agricultural land to a third party.

A. **Applicability.**

The Right of First Refusal applies only to a sale or lease when the seller or lessor acquired the property by enforcing a debt against agricultural land or farm homestead, including foreclosure of a mortgage, accepting a deed in lieu of foreclosure, terminating a contract for deed, or accepting a deed in lieu of terminating a contract for deed. See Minn. Stat. § 500.245, Subd. 1.

B. **Obligation to Make Equivalent Offer.**

A “lender” may not lease or sell the agricultural land (or farm homestead) before offering or making a good faith effort to offer the land for sale or lease to the immediately preceding former owner at a price no higher than the highest price offered by a third party that is acceptable to the seller or lessor.

C. **Pre-Sale Notice Requirement.**

The seller must provide written notice to the immediately preceding former owner that the agricultural land (or homestead) will be offered for sale *at least 14 days before* the agricultural land is offered for sale.

D. **Immediately Preceding Former Owner.**

- 1. The immediately preceding former owner is the entity with record legal title to the agricultural land (or farm homestead) for the acquisition by the seller except, if the immediately preceding former

owner is a bankruptcy estate, the debtor in bankruptcy is the immediately preceding former owner.

2. An immediately preceding former owner can only be a family farm, family farm corporation, family farm partnership, or family limited liability company, as defined as Minn. Stat. § 500.24.

E. **Notice of Offer.**

1. The offer must be made on the Notice of Offer “form” at Minn. Stat. § 500.245, Subd. 2.
2. In addition to the Notice of Offer statutory language, if the offer is to sell, a copy of the purchase agreement containing the price and terms of the highest offer made by a third party that is acceptable to the seller, and a signed affidavit by the seller affirming that the purchase agreement is true, accurate and made in good faith must be included with the Notice of Offer. The seller, in its discretion, may delete the third party’s identity from the copy of any purchase agreement.
3. For an offer to lease, a copy of the lease containing the price and terms of the highest made by a third party that is acceptable to the lessor, along with a signed affidavit by the lessor affirming that the lease is true, accurate and made in good faith, must be included with the notice. Again, the third party’s identity may be deleted from a copy of the lease agreement.

F. **Price no Higher than the Highest Price Offered by a Third Party.**

1. This term means an acceptable cash price offered by a third party or the acceptable time-price offer made by a third party.
2. A “cash price offer” is one that involves a simultaneous transfer of title for payment of the entire amount of the offer.
3. If the acceptable offer made by a third party is a “time-price offer” the seller/lessor must make the same time-price offer or equivalent cash offer to the immediately preceding owner.
4. The time-price offer is an offer that is financed entirely or partially by the seller and includes an offer to purchase under a contract for deed or mortgage.

G. **Right of First Refusal with respect to Lease.**

1. The immediately preceding former owner must exercise the right to lease all or a portion of the agricultural land in writing within 15 days after an offer to lease is mailed with a receipt of mailing or personally delivered.
2. Within 10 days after exercising the right to lease, the immediately preceding former must fully perform according to the terms of the offer including paying the amounts due.

H. **Right of First Refusal with respect to Sale.**

1. The immediately preceding former owner must exercise the right to buy the agricultural land, and all or a portion of the agricultural land, in writing within 65 days after an offer to buy is mailed with a receipt of mailing or personally delivered.
2. Within 10 days after exercising the right to buy, by accepting the offer, the immediately preceding former owner must fully perform according to the terms of the offer including paying the amounts due.

I. **Effect of Failure to Timely Exercise Right of First Refusal.**

1. If the immediately preceding former does not accept an offer to lease or buy before the offer terminates as discussed above, or if the immediately preceding former does not perform the obligations of the offer within 10 days after accepting the offer, including paying the amounts due, the seller may sell or lease the agricultural land to the third party in accordance with their lease or purchase agreement.

J. **Duration of Seller's Obligation to Offer Right of First Refusal.**

1. The seller is obligated to offer right of first refusal for a period of 5 years. Minn. Stat. § 500.245, Subd. 1,
2. Offer to lease is required only until the immediately preceding former owner fails to accept an offer to lease the property or the property is sold,
3. Offer to sell is required until the property is sold,
4. If the former owner elects to lease or purchase a portion, the Right of First Refusal does not apply to the seller with respect to the balance of the property.

K. **Prohibition for Assignment of Right of First Refusal.**

1. The immediately preceding former owner's right to receive an offer to lease or purchase agricultural land may not be assigned or transferred (except as provided for in Minn. Stat. § 500.245(1)), but may be inherited. Minn. Stat. § 500.245, Subd. 1(m).

L. **Waiver; Limitation Statement.**

1. The right of first refusal of the immediately preceding former owner may be extinguished or limited by an express statement signed by the immediately preceding former owner, but the right may not be extinguished or limited except by:

- a) An express statement in a deed in lieu of foreclosure of the agricultural land; and
- b) An express statement in a deed in lieu of a termination of a contract for deed for the agricultural land.

IX. **FORM I-9 COMPLIANCE (EMPLOYMENT OF AUTHORIZED WORKERS).**

A. **Overview.**

The Immigration Reform and Control Act of 1986 (the “IRCA”) was the first law which included provisions prohibiting the employment of unauthorized alien workers. The IRCA provides for civil and criminal penalties against an employer for knowingly hiring, recruiting or referring for a fee, or continuing to employ unauthorized alien workers. The Immigration Act of 1990 and the Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”) of 1996 modified the IRCA. Both the Immigration Act of 1990 and the IIRIRA came in response to what was perceived as wide spread employer discrimination in the employment process coupled with the wide availability of fraudulent documents.

The means by which an employer establishes whether an individual may legally work in the United States is the so-called Form I-9, *Employment Eligibility Verification*. The Form I-9 is a means whereby the employer establishes both the **IDENTITY AND EMPLOYMENT AUTHORIZATION** for each individual that the employer is hiring. With some exceptions all employees – citizens and noncitizen nationals of the United States – are required to complete a Form I-9.

In 1991 a *Handbook for Employers* was published with instructions to employers on how to comply with the law. At the time the IIRIRA revised the list of acceptable documents to be used in the employment verification process. In June 2011, the United States Customs and Immigration Services (“USCIS”) published its *Handbook for Employers*, a sixty-five page book of instructions and guidelines for completing the Form I-9. A more recent version of the *Handbook for Employers* was published in January 2017 on the heels of a new Form I-9 published in November 2016.

B. **Form I-9 (Section 1, Section 2 And Section 3).**

1. **General Information.**

The Employee is required to complete Section 1 of the Form I-9 and provide the following information:

- Name
- Address
- Date of birth

- Social Security Number. Providing the Social Security Number is voluntary except if the employer is participating in a USCIS E-Verified Program which requires an employee's Social Security Number for employment eligibility verification.
- Attestation to the effect that the employee is: (1) a citizen of the United States, (2) or, a noncitizen national of the United States, or (3) a lawful permanent resident, or (4) an alien authorized to work in the United States.

C. **Only Employees Complete Form I-9 – Who is an Employee?**

Only employees are required to complete the Form I-9. The following groups of individuals are not required to complete a Form I-9:

Employees hired on or before November 6, 1986, Casual Domestic Work, Independent Contractors, and Contract Services.

D. **Documents for Review Supporting Identity and Authorization of Employee.**

The employee is required to provide the employer with an original document or documents which evidence the employee's identity and employment authorization. The document or documents **must** be provided within **three days** of the date employment begins.

The employer must ensure that the employee completes Section 1 of Form I-9 by the employee's first day of work for pay. The employee may complete Section 1 of Form I-9 at any time between the acceptance of the job offer and the first day of work for pay.

There are three types of documents that are acceptable for the purposes of the Form I-9: (1) List A Documents which show both identity and employment authorization; (2) List B Documents which evidence the identity of the employee only; or, (3) List C Documents which evidence employment authorization only.

- **List A: Documents that Establish Both Identity and Employment Authorization.**
 1. U. S. Passport or Passport Card
 2. Permanent Resident Card or Alien Registration Receipt Card (Form I-551)
 3. Foreign passport that contains a temporary I-551 stamp or temporary I-551 printed notation on a machine-readable immigrant visa (MRIV)

4. Employment Authorization Document (Card) that contains a photograph (Form I-766)
5. In the case of a nonimmigrant alien authorized to work for a specific employer incident to status, a foreign passport with Form I-94 or Form I-94A bearing the same name as the passport and containing an endorsement of the alien's nonimmigrant status, as long as the period of endorsement has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified on the form
6. Passport from the Federated States of Micronesia (FSM) or the Republic of the Marshall Islands (RMI) with Form I-94 or Form I-94A indicating nonimmigrant admission under the Compact of Free Association Between the United States and the FSM or RMI
7. In the Commonwealth of the Northern Mariana Island (CNMI) only, a foreign passport along with special documents issued by the CNMI.

- **List B: Documents that Establish Identity.**

For individuals 18 years of age or older:

1. Driver's license or ID card issued by a state or outlying possession of the United States, provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address
2. ID card issued by federal, state, or local government agencies or entities, provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address
3. School ID card with a photograph
4. Voter's registration card
5. U.S. military card or draft record
6. Military dependent's ID card
7. U.S. Coast Guard Merchant Mariner Card
8. Native American tribal document
9. Driver's license issued by a Canadian government authority

For persons under age 18 who are unable to present a document listed above:

10. School record or report card
11. Clinic, doctor, or hospital record
12. Day-care or nursery school record

- **List C: Documents that Establish Employment Authorization.**

1. U.S. Social Security account number card other than one that specifies on the face that the issuance of the card does not authorize employment in the United States.

NOTE: A Copy (such as a metal or plastic reproduction) is not acceptable.

2. Certification of Birth Abroad issued by the U.S. Department of State (Form FS-545)
3. Certification of Report of Birth issued by the U.S. Department of State (Form DS-1350)
4. Original or certified copy of a birth certificate issued by a state, county, municipal authority, or outlying possession of the United States bearing an official seal
5. Native American tribal document
6. U.S. Citizen Identification Card (Form I-197)
7. Identification Card for Use of Resident Citizen in the United States (Form I-179)
8. Employment authorization document issued by DHS

NOTE: Expired documents are not acceptable for verification – An employer may, though, accept Employment Authorization Documents (Form I-766) and Permanent Resident Cards (Forms I-551) that appear to be expired on their face but have been extended by USCIS. **NOTE** also photocopies of documents are not acceptable – originals only.

E. **Review of Documents by Employer (Section 2).**

The Employer is required to complete Section 2 of the Form I-9. Section 2 of the Form I-9 requires that the Employer examine one document from the List A Documents **OR**

examine one document from List B (identity) **AND** one from the List C (employment authorization). The Employer is then required to sign Section 2 and attest that the “document(s) appear to be genuine and to relate to the employee named” and further attest as to the date the employee began employment and further “that to the best of my knowledge the employee is authorized to work in the United States.”

F. **Retention of Forms I-9 Photocopying of Documents.**

Forms I-9 must be retained for as long as the individual works for the employer. Once the individual’s employment has terminated, the employer must then retain the Form I-9 for the longer of three years after the date of the employee’s hire, or one year after the date employment is terminated.

Forms I-9 may be retained on paper or microform, or electronically. Whether Forms I-9 are retained electronically, by microfilm/microfiche or paper, the Forms I-9 must be made available for inspection within three days of a request by the Department of Homeland Security or the Department of Labor.

An employer may copy or scan documents an employee provides when completing the Form I-9. The employer may keep the copies but the employer is not required to retain copies of the scanned/copied documents for its files. In the event the employer retains copies of the documentation, the employer must do so with respect to all employees. The documentation should be kept with the copies of the Forms I-9.

G. **Inspection by Department of Homeland Security.**

The employer must be given a minimum of three days’ notice prior to inspecting Forms I-9 and must make the Forms I-9 available at the location where the Department of Homeland Security, Department of Labor or Office of Special Counsel requests to see them.

H. **E-Verify.**

E-verify is an automated link to the Social Security Administration and Department of Homeland Security databases to assist employers in confirming the employment authorization of new hires. Employers who voluntarily participate in E-Verify must still complete a Form I-9 for each newly hired employee.

E-Verify is not to be used until **after** new hires have completed a Form I-9. It cannot be used as a pre-screening tool for job applicants. In using the E-Verify Program, an employer **must** use it for all new employees.

X. MINNESOTA’S “BUFFER LAW.”

A. A Requirement, an Alternative, and Some Exemptions.

Minnesota’s “Buffer Law” begins with a requirement. If land adjacent to a body of water that is identified and mapped on the buffer protection map, the farmer must establish and maintain a buffer 50 feet wide on average if the land is adjacent to public waters or 16½ feet minimum width if adjacent to a public drainage system. A “buffer” is specifically defined in Minn. Stat. § 103F.48, Subd. 1(b). Essentially, it must contain perennial vegetation, excluding invasive plants and noxious weeds. After a 2017 amendment, it must use seed mixes verified by the Department of Agriculture to prevent contamination with Palmer amaranth or other noxious weed seeds. By definition, the buffer must also protect the water resources of the state from runoff pollution, stabilize soils, shores and banks, and protect riparian corridors. What constitutes a legal buffer under the statute may encompass more than originally planned.

The statute provides an alternative to establishing a buffer alternative riparian water quality practices. These are approved alternative practices that are meant to provide the same level of water quality protection comparable to a buffer. The statute provides these alternative practices include retention ponds and alternative measures that prevent overland flow. Some publications may describe the 2016 amendment as requiring retention ponds as part of an alternative water quality practice. The law does not specifically say whether the alternatives may or must include retention ponds. The alternative is available to landowners whose property is used for cultivation farming. So, the buffer requirement applies to everyone with land on the buffer protection map, but the alternative of establishing a water quality practice apparently is available only to landowners who are cultivating the adjacent property.

The law also provides for some exemptions. As long as there is compliance with any state shore land rules that may affect the property. The statute contains several exemptions, most notably enrollment in the federal Conservation Reserve Program. See, Minn. Stat. § 103F.48, Subd. 5.

B. Dates and Deadlines, But No “Automatic” Waiver.

Despite various amendments, the statute’s deadlines for establishing buffers remain unchanged: November 1, 2017, for public waters, and November 1, 2018, for public drainage systems. Since the beginning, the statute has provided that the Soil and Water Conservation Districts may issue a “validation of compliance,” demonstrating compliance with the statute’s requirements. Beginning with the first special session of the Legislature in 2015, the law provided for a “conditional compliance waiver.” This conditional waiver is available if an application is made for eligibility for financial or technical assistance, but that assistance is not currently available. This conditional compliance waiver is valid until the financial or technical assistance becomes available for the buffer or alternative practice installation, but it expires November 1, 2018. The key to obtaining the conditional waiver is that you must have applied for and maintained eligibility for financial or technical assistance.

The 2017 amendment provides for the granting of another conditional compliance waiver that will be valid until July 1, 2018. The Soil and Water Conservation District must grant these waivers to landowners who have filed “a parcel-specific riparian protection compliance plan” by November 1, 2017. Therefore, a November 1, 2017, deadline exists to file a specific plan with the local Soil and Water Conservation District. Do not expect to simply call in or stop by your SWCD and pick up the automatic waiver. If the buffer law applies to your land and one of the conditional compliance waivers is not in hand by the deadline to establish a buffer or an alternative practice, that constitutes a violation of the statute and enforcement actions could be initiated.

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