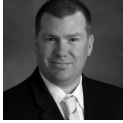


AGRIBUSINESS LEGAL ALERT

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New Legislation Affects Farmers and Agribusiness Owners

By Jonathan J. Siebers, Attorney

The Michigan Legislature recently passed two laws that affect how land is bought, sold and leased in Michigan. Landowners should have at least a basic understanding of these laws as the failure to comply with them could result in liability.

Baseline Environmental Assessment (BEA)

First, the Legislature recently passed a law that modifies the process for preparing and submitting a Baseline Environmental Assessment (BEA). The BEA process is intended to provide real estate buyers with protection against liability for the clean-up of pre-existing contamination. The BEA process has been changed as follows:

1. Formerly, Michigan law had three BEA categories and the buyer would choose between the categories based on whether the buyer's operations could introduce new contamination on the property and, if so, what type of contaminants the buyer would use on the property. The new law eliminates the three categories and requires that a single BEA category be used in all situations.
2. Formerly, Michigan law allowed a buyer to submit the BEA to the Michigan Department of Natural Resources and Environment (MDNRE) and the MDNRE would then affirm the BEA. The new law requires that buyers still file the BEA with the MDNRE to obtain protection against pre-existing contamination, but the MDNRE no

longer has the responsibility of affirming the BEA. Rather, to obtain protection from liability relating to pre-existing contamination, the buyer must: (1) submit the BEA to the MDNRE and (2) establish that the buyer performed an "All Appropriate Inquiry" investigation.

Commercial Broker's Lien Act

Second, the Michigan Commercial Broker's Lien Act took effect in October. This law allows a broker representing a buyer, seller, landlord or tenant to place a lien on the subject property under certain circumstances.

This Act, which is designed to protect the broker's ability to collect its commission, only applies to commercial property. Based on the Act's broad definition of "commercial property," the Act will apply to many transactions involving vacant land used for agriculture. To avoid liens, parties to the transaction will need to follow the Act and obtain lien waivers from real estate brokers involved in the transaction.

For more information on either of these new laws or how they affect a particular transaction, please contact Smith Haughey.

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Year End Tips for Increasing Revenue and Avoiding Risk in 2011

For farmers who hope to increase revenue and lower risk during 2011, here are a few things to consider doing during the winter. Farmers should review the following:

- Their current business structure to ensure that they are receiving the property tax treatment and limiting liability.
- Their succession plan to ensure that it is up-to-date. If they do not have a succession plan, they might consider preparing one. A strategic succession plan can be key in funding the departing owner's retirement and will help increase the likelihood of financial security after the owner's departure. It will also allow him to have a say in the future structure of the business. In addition, a successful succession plan can result in estate tax savings.
- Their real property and income taxes. Depending on each situation, some farmers may be able to decrease their tax liability through real property tax exemptions by appealing the real property valuation, or through the conveyance of a conservation easement.
- Their labor and employment policies. The Department of Labor has stepped up enforcement efforts in certain areas including child labor laws and H2-A visa program compliance. Employers should review their labor policies to ensure that their business is in compliance and not at risk of fines from the DOL.
- Their leases to make sure they are paying market rates for land that they lease from others. Also, depending on the location, some farmers may be able to generate additional income by leasing land for wind development, oil and gas exploration, farming, hunting, etc.
- Their future real estate needs. With current values and interest rates, it's now a great time to buy certain types of real estate.
- Their agri-tourism policies to make sure that they are adequately protected against claims by visitors. If farmers are not engaged in agri-tourism, such as corn mazes, apple picking, and farm tours, they may want to consider it as a means of increasing revenue.

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