LEGAL FOOD HUB
A project of Conservation Law Foundation

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Buying the Farm – Part I

Farmers can obtain rights to farmland in a variety of ways, for example, by entering into a lease with the owner of the farmland, sharing ownership of the land with others, or acquiring full ownership ("fee simple" title) of the farmland. Fee simple ownership is considered the highest form of real estate possession since the property is owned outright.

Part I of this Guide focuses on (i) the different types of land ownership, (ii) the advantages and disadvantages of purchasing the farmland directly through fee simple ownership, and (iii) considerations when locating the right farmland to purchase.

Different Types of Land Acquisitions

- In a *fee simple acquisition* of farmland, the farmer obtains title to the land from the existing landowner through receipt and recordation of a Deed. The sale of the property is usually governed by a Purchase and Sale Agreement. A Deed is the legal document that transfers ownership from seller to buyer. As a result, the farmer owns the land and any improvements on the land in perpetuity. This is the purest form of land ownership.

- *Joint ownership* is an alternative to fee simple ownership in which ownership rights are shared with others (referred to in real estate terms as a "concurrent estate"). Examples of concurrent estates include joint tenancy, tenancy by the entirety, or tenancy in common.

- In a *joint tenancy* structure, the farmer owns the land with one or more other owners ("joint tenants") with shared rights and obligations to the farmland. If one joint tenant dies, ownership automatically transfers to remaining joint tenants.

- A *tenancy by the entirety* structure can occur when the owners of the farmland are married and gives each spouse an equal and undivided interest in the farmland.

- In a *tenancy in common* structure, the farmer owns a specified ownership interest in the farmland with one or more other owners owning the remaining interests. Ownership can be unequal. Unlike a joint tenancy structure, in some cases each tenant-in-common can sell or transfer its ownership interest independent of the other owners.

These types of joint ownership are more complex and therefore less common than fee simple acquisition or leasing.

- Another common way to use and operate farmland is through leasing (known as a *leasehold interest*). In this structure the farmer enters into a lease with the owner of the farmland, which creates a landlord-tenant relationship. The lease sets out the rights, obligations and limitations of the landlord and tenant with respect to the land, including the amount of rent due to the landlord, the term of the lease, and whether landlord shares in the profit of the farming operations.

Advantages and Disadvantages of Fee Simple Ownership

Advantages of Fee Acquisition:

- Provides the farmer with the greatest flexibility and security of what the farmer can do with the land. For example, the farmer does not need to worry about rising rents or expiring terms that are often associated with a lease.

- A farmer owns all improvements to the land, so it is possible and worthwhile to make long-term investments in the farm, such as soil and other infrastructure improvements.

- Farmer has the ability to hold on to the farmland for as long as he or she wishes, or alternatively sell the farmland and receive a return on the initial investment.

- As the farmer builds his equity in the farmland and pays down debt, the farmer can utilize different financing options to borrow money with land equity as security.

Disadvantages of Fee Acquisition:

- Buying land may not make sense for first-time or inexperienced farmers who would prefer a short-term commitment associated with a lease.

- Farmers may not have the cash available to purchase land outright. Lenders typically require a demonstrated track record of both successful farm business management and a credible cash-flow projection when providing financing for farmland acquisition.

- Depending on the economic environment, selling the farmland may be difficult and costly, and buying land may be financially riskier than alternatives like a short-term lease.

- Fee acquisition may expose the farmer to potential liabilities that it would not be exposed to as a tenant (for example, with respect to environmental issues).

- Although fee simple ownership is the highest form of property ownership, that does not mean there are no limits. The farmer's ownership rights will be subject to any property rights of others to use or access the land, local zoning laws, building codes and government actions.

Locating the Right Property for the Farmland

The first step for every farmer looking to acquire farmland is to locate the property that is suitable for their needs. Investigation and analysis put in before making an offer can help with making the right choice at the right price.

To start, the farmer should **clearly outline their plan and vision for the farmland**. This will help define what land is suitable for their needs. For example, what crops or animals does the land need to support? Does the farmer plan to organically farm, grow forage crops or pasture animals? What kind of buildings, fencing, equipment, irrigation, and other infrastructure systems is needed to support the farming activities?

With the farmer's plan and vision clearly outlined, the farmer should then try to **learn as much as possible about the conditions of the land before submitting an offe**r. Conditions to investigate include the soil quality, irrigation and water drainage capabilities, and historic or potential erosion. The farmer should also investigate the existing buildings and facilities to determine whether they will suffice for their needs or will require an investment to improve them.

After these determinations are made the farmer can then **make a financial analysis to determine how much they can afford to pay and/or borrow for the land**. This analysis should take into the consideration the cost of the land, property taxes, required improvements to buildings, facilities and infrastructure, and a projection of maintenance and operating costs and the income from running the farm. Before making an offer the farmer can consult with a rural property lender to determine what financing options are available to the farmer and at what terms and interest rate, including whether the farmer is eligible for a government subsidized farm loan program from the Farming Service Agency.[1]

Summary

While fee acquisition ownership is the purest form of ownership that will provide the farmer with the most control and flexibility in operating the farm, special considerations should be made for each farmer depending on their needs, goals, and financial profile.

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[1] For more information, visit https://www.fsa.usda.gov/programs-and-services/farm-loan-programs/.

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