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* We hope you enjoy our new photos used throughout the newsletter that have been taken from our new office in Delaware!

Greetings from Wright & Moore!



We hope everyone is having a great start to Fall! As many of you may know, last November, we packed up our office in Dublin and moved to Delaware and have since settled in quite nicely. While relocating proved to be a tough task, we couldn't be happier with our new home. Delaware has been very welcoming and the "small town" feel is exactly what we were in search of. If you haven't had a chance to visit the new office, please stop in and say hello! We are located in the heart of downtown Delaware at 92 North Sandusky Street, Suite 300, directly across the street from the Delaware County Court House.

It has been a while since our last newsletter and a lot has changed here at Wright & Moore. This past summer was very busy for most of us inside and outside of the office. Robert and Kelly Moore's 9 year old daughter Maddie, competed in her first sheep show at the Delaware County Junior Fair, where she won First Place in one of her market classes. In July, Attorney Kent Jorgensen and his wife Brooke welcomed their third child, a baby girl. We had a new attorney join our firm, Ryan Conklin. We also had two anniversaries recognized – Brandy Ward celebrated her 3rd year as the office receptionist as well as our office manager, Joanne Schindelar, who celebrated her 18th anniversary here at Wright & Moore!

With winter and the holidays approaching quickly, we hope that those of you that haven't had a chance to see the new office find time to come by for a visit before your schedules become filled with family gatherings during the holidays. We are truly enjoying the new space and everything that Delaware has to offer. We hope that you'll love the new office as much we do!

A few things we'd like to make you aware of aside from the new address are the contact numbers for Wright & Moore. The new main number is (740)990-0750 and all fax correspondence should now be sent to (740)417-4411. Feel free to give us a call with any questions or concerns you may have. As always, be sure to stay updated on the latest news, updates and events here at Wright & Moore by visiting our website: www.OhioFarmLaw.com and don't forget to like our Facebook page! Have a wonderful fall and we hope to see you all soon!



Employment Law Compliance on the Farm: No Easy Job

By: Ryan Conklin

About six months ago, I graduated from law school and my long tenure in higher education came to an end. After a decade of school, I finally joined “big kid world,” as my friends humorously call it. While I could do without the massive taxes on my paycheck, I am certainly grateful to be onboard at Wright & Moore. Not two months into my time at Wright & Moore, Kelly, Robert, and Kent charged me with hiring our new communications intern. For the first time ever, I was the one doing the hiring, instead of the one being hired (obviously, doing the hiring is much more fun). However, this process taught me a very important lesson: hiring and managing a new employee in alignment with the law is tough work, and we were only hiring a ten hour per week intern.

Now I need to comply with employment laws as well?

Many agribusiness owners wage a daily battle to comply with federal and state environmental laws, health and safety regulations, tax codes, food handling statutes, and other relevant rules. The thought of adding employment laws to this mix of compliance areas might make you cringe. How are you supposed to make sure your agribusiness obeys the rules in all of these areas of law, and run a profitable enterprise at the same time? Let me offer some reassurances to calm your concerns. Employment law compliance, much like compliance in other areas of law, can be accomplished by implementing a new process or routine in your agribusiness. Once a new process is successfully implemented, compliance becomes as routine as feeding your stock everyday. The best example of this is a hiring process. Accepting job applications,

conducting interviews, and completing an employment agreement can be effortless tasks if a routine is in place.

Additionally, the Ohio agriculture community will soon enjoy access to two new resources being released in the next year. The first, the Ohio Farm Employment Handbook, is a comprehensive guide to all employment laws applicable to all types of agribusiness owners. This handbook will be available as an online or print resource through Ohio State Extension. The second tool is a joint effort produced by Ohio Farm Bureau Federation and Wright & Moore. These groups have collaborated to assemble a more focused tool that stresses the hiring process, employee management, and crisis planning. Lastly, and most importantly, Wright & Moore is expanding its areas of practice to include employment law compliance in order to better serve our farm clients.

Wait a second, Wright & Moore practices employment law?

This is breaking news, folks. Wright & Moore will soon offer legal assistance with employment law compliance. While my first few months of my time with Wright & Moore have been spent learning the ropes from my superiors and mentors, very soon my workload will shift into the employment law arena. If you are a business owner and you would like to bring your operation into compliance, my hope is that you will give our office a call so we can assist you. To learn more about our employment law practice area, check out “Coming Soon: New Practice Areas for Wright and Moore,” later in this newsletter, which discusses the new practice areas for our firm.

Common Legal Questions

By: Robert Moore



We obviously receive many calls regarding issues related to agricultural law. One of the things that make our jobs interesting is that we never know what the next phone call will be. We have received calls on everything from therapy chickens to burying cats in cemeteries. Below are a few of the more common

questions we get, perhaps one of these will save you a phone call in the future.

Can I trim overhanging branches?

If limbs are overhanging a boundary fence, you are entitled to cut the limbs on your side of the fence without permission of the neighbor. Under Ohio law, your property rights extend upward at the boundary line. If a tree is located in the boundary line, the tree is jointly owned and cannot be removed without the permission of the neighbor. However, any overhanging limbs of a jointly owned tree can be cut without permission.

Can I open burn?

Generally, open burning is allowable for agricultural waste which includes tree trimmings, stumps, brush, weeds, leaves, grass, shrubbery and material from crop or livestock production. However, municipalities and townships can have specific ordinances and zoning which limit or prevent open burning. Before burning, be sure to check with local officials to determine if there are any local restrictions. If there are no local ordinances, open burning is under the jurisdiction of Ohio EPA. For more information, Ohio EPA has an excellent brochure on open burning at: epa.ohio.gov/dapc/general/openburning.

What is the law on water drainage?

As you know, parts of Ohio have some of the most intensively drained soils in the country. Understandably, issues arise as to water drainage and the laws affecting drainage. Ohio has adopted the "Reasonable Use" doctrine. In essence, this legal theory allows property owners to deal with the water on their property as long as it does not unreasonably interfere with the drainage on neighboring properties.

Some examples of violating the Reasonable Use doctrine are:

- Placing a barrier or dam at your property's boundary causing water to backup onto the neighbor.
- Building a retention pond on your property with a single outlet onto the neighbors causing erosion (you cannot collect water from a broad area and release onto the neighbor in a concentrated manner).
- Redirecting natural water flow which causes damage to the neighboring property.

Does my lease need to be in writing or notarized?

Every lease should be in writing but for many different reasons about half of all farm leases are verbal. If your lease is not in writing, you do run the risk of having the other party not honor the verbal lease. Whether a verbal lease is valid depends on the specific facts and how a judge or jury sees the case. There is no precise test that exists to determine the enforceability of a verbal lease. With the current status of Ohio law on verbal leases, you could take the exact same scenario to different counties and have the judges/juries come out with two different verdicts. Proceed with verbal leases at your own risk.

Leases with terms exceeding three years must be notarized. Long-term leases that are not notarized are, by law, converted to year to year leases. For example, a five year lease that is signed but not notarized is actually just a year to year lease that either party can terminate at year's end.

Long-term leases should be recorded. The recording prevents the lease from being terminated when the landowner sells the land and does not tell the buyer the land is leased. By recording a deed, the tenant is providing "constructive notice" that he has the land leased. Constructive notice is a legal term meaning everyone is on notice there is a lease in place even if they don't actually find the lease at the recorder's office.

The above are just a small sampling of the issues for which we receive calls and provide assistance. We always appreciate hearing from our clients and are happy to try to give you advice on your legal issue.

Federal Taxes

By: Kay Hafer, Dave Miller

All indications are that Congress may extend many tax provisions that ended 12/31/2014, but not until the potential December government shutdown has been resolved. So while we are hopeful, there isn't any guarantee they will be allowed in 2015. A few of those provisions are: 1) for K-12 school teachers, a \$250 above the line deduction for classroom supplies, 2) the eligibility of 50% Bonus Depreciation for 1st time use purchases, 3) the IRC section 179 expense allowance (rather than depreciation) of up to \$500,000 of purchases when no more than \$2 Million of total purchased are made within the year, and 4) the provision for gifting the IRA minimum required distribution as a tax free distribution to a charitable entity. Currently, the 179 expensing is \$25,000 of expense, with the cap beginning at \$200,000 of assets purchased during the year. The maximum of \$200,000 includes

the cost of buildings, even if those buildings aren't eligible for the 179 deduction.

Part of the new health insurance program, the Affordable Care Act, requires forms 1095 be sent to taxpayers. The 1095-A, Health Insurance Market Place Statement (for those enrolled in the government supported Market Place Health insurance program), the 1095-B, Health Coverage (from the health insurance provider) and the 1095-C Employer Provided Health Insurance Offer and Coverage (from employers with 50 or more full time employees) should be mailed to recipients by the end of January, 2016. The forms will contain valuable information needed to complete your 2015 personal income taxes, so keep these forms with your 2015 income tax records, and provide them to your tax preparer.

The IRS claims they will be matching the cost basis used on sales of inherited assets, with the estate tax returns, where the basis has been declared. While the IRS hasn't

indicated how they expect to proceed with the matching, the safe policy is to make sure the beneficiaries of Estates and Trusts are provided complete details of the cost basis of all assets they inherit or receive.

As a reminder, the IRS will not contact you by phone, email, or fax. You will receive a letter in the mail for any questions they have. Those received other than by mail, are probably scams.

Ohio Taxes: The Ohio Department of Taxation (ODT) is verifying items reported on taxpayer's Ohio income tax returns with their individual federal returns (1040, 1040A). Specifically, ODT is sending notices and billing for underpayment of taxes when they find discrepancies in the filing status, number of personal exemptions, or the dollar amount of the Federal Adjusted Gross Income. If you receive a Federal Adjusted Gross Income (FAGI) billing notice, be sure to review your returns, and respond timely.

Wright & Moore Welcomes Ryan Conklin



On August 17, 2015, Wright & Moore welcomed the newest member of its legal team, Ryan Conklin. Ryan hails from Plain City, where he grew up on his family's small dairy farm. Ryan graduated from Fairbanks High School in 2005, where he actively participated in FFA and the varsity golf team. Next, Ryan's educational track took him to The Ohio State University. While at Ohio State, Ryan served as president of Alpha Gamma Sigma fraternity, the Agribusiness Club, and the College of Food, Agricultural and Environmental Sciences Student Council. Also, in 2010, Ryan was a member of the Ohio State Dairy Challenge team that achieved a Platinum rating and the title of co-national champion. Prior to graduating with his degree in animal sciences and agribusiness and applied economics, Ryan was selected as a Top Ten Senior for the College, and as an Ohio State Outstanding Senior.

Upon departing from Ohio State, Ryan pursued his masters degree at the University of Florida in agricultural education. Ryan's graduate thesis examined the factors that influence promotion and discipline in agricultural organizations. During his two-year tenure in Gainesville, FL, Ryan also studied agricultural and natural resource law, a decision that set him on the path to law school. Ryan's pursuit of his juries doctor degree at the Michigan State University College of Law began in August 2012 and ended with his graduation in May 2015. While at Michigan State, Ryan's study of agricultural law intensified. There, he completed internships with the Michigan Department of Agriculture and Rural Development, Farm Credit Mid-America, Ohio Farm Bureau Federation, and Wright & Moore. Furthermore, he completed coursework in food law, labor law, environmental law, land use law, and hospitality law.

Ryan passed the July 2015 Ohio Bar Examination and was sworn into the practice of law on November 16, 2015 during a special session of the Ohio Supreme Court. In addition to continuing the firm's work in estate and business planning, Ryan hopes to break ground on new practice areas for Wright & Moore, including agricultural employment law, agritourism law, and food law.

Coming Soon: New Practices Areas for Wright & Moore

By: Ryan Conklin

For many years, our clients have trusted Wright & Moore to resolve legal issues related to estate planning, business formation, property disputes, oil and gas leases, and other fields. Current events in agriculture, as well as requests from our current clients, have opened the door for two exciting new areas of practice for Wright & Moore. Effective immediately, our office is excited to serve the legal needs of clients in the fields of agritourism law and agricultural employment law. Here is a brief examination of each area.

Agritourism Law

U-Pick pumpkin patches, wedding barns, hay rides, petting zoos, and corn mazes. These types of businesses are common examples of agritourism operations that can be found in your town today. Recently, Ohio agriculture has enjoyed a boom in the number of agritourism opportunities. Agritourism businesses have provided the public with fun, exciting, and family-oriented ways to learn more about our industry. However, owners of these operations have special legal needs due to the large number of visitors they invite onto their land.

With our experience in agriculture, as well as our knowledge of emerging issues in agritourism law, Wright & Moore is thrilled to offer new services to our current agritourism clients. Similarly, we are hoping that our specialization in this area of law will attract new agritourism clients to the firm. Our new services in this field include:

- Audits of agritourism businesses, with emphasis on identifying potential areas of liability
- Liability minimization strategies for agritourism operations
- Resolving zoning issues with local authorities
- Crisis planning
- Proper hiring, training, and orientation procedures for employees

Whether you own and operate a cider mill or plan on opening a special events barn in the next year,

Wright & Moore is uniquely positioned to tackle the legal issues facing these special businesses.

Agricultural Employment Law

If you are a business owner and reading this article, chances are that you have dealt with the challenges presented by employment law compliance.

Agriculture, perhaps more so than other industries, struggles to align itself with the demands of the law. Recognizing this area of difficulty for the industry, our office is taking steps to remedy the employment law compliance issue that consistently confronts agriculture. With the help of fellow Wright & Moore

attorney Kent Jorgensen, we will be working together to confront the employment law demands of our clients. In addition to studying labor law and employment law in law school, my experiences with three previous jobs sparked my interest in this field. In fact, while working on the Ohio Farm Employment Handbook (referenced above), Professor Peggy Hall asked our group, “Does anybody know of an agricultural employment law expert in Ohio?” I remember sitting in our first planning meeting in July 2014 trying to

come up with an answer. Amazingly, our team could not produce the name of an expert in this field. While sitting in that meeting I thought to myself, “why shouldn’t I be the Ohio attorney who practiced and excelled in this area?” More than one year later, Kent and I are very close to making this thought a reality.

While the first few months of my time with Wright & Moore have been spent learning the ropes from my superiors and mentors, very soon my workload will shift into the employment law arena. Whether it is preparing employment agreements, an application and interview process, discipline, addressing wage and hour standards, hiring minors on farms, or working with family members, Kent and I have done the homework and are ready to assist you. If you are a business owner and you would like to bring your operation into compliance, my hope is that you will give our office a call.





Understanding Titles to Real Estate

By: Kent Jorgensen



Farmers are dependent on the quality and fertility of their ground to help feed their families and the world. If a farm wants to be successful today and into the future, a careful plan must be put in place to help maintain and improve soil health. Farmers spend countless hours contemplating crop rotation schedules, fertilizer application

requirements, and erosion prevention techniques all in an effort to guarantee their farm's long term success.

Much is done to improve soil health, but often times farmers don't pay enough attention to the legal aspects of the land they farm. How land is titled can directly affect how it will be transferred under an estate or farm succession plan. Understanding the basics of land titling and the tools available to transfer it can help your farm succeed in the long term.

Sole Owner:

This is the simplest title to figure out. It simply means that land is owned in the name of one individual. At the death of that individual the land will have to go through the probate process, and will be transferred to the parties named in the deceased person's Will. This can lead to problems if nothing is done, particularly if the landowner's Will does not include specific provisions on how to transfer that land. Further, if the landowner does not have a Will the probate court will divide the ownership of the land up among the rightful heirs. This almost always results in joint ownership of land. If not handled correctly individually owned land can end up in the wrong hands.

Tenants in Survivorship:

Tenants in Survivorship is similar to Tenants in Common, with the exception that the land will automatically transfer upon one of the landowner's death to the remaining landowners. Anyone can hold land with a survivorship interest; however, this is most common between spouses. Many people confuse a survivorship interest with tenants in common. Many assume that if both spouses' names are on a deed that it is owned as tenants in survivorship; this is not always

true. In order for land to be held as tenants in survivorship specific language must be included in the deed. Generally this language will state "Jon Doe and Jane Doe, husband and wife, **for their joint lives, remainder to the survivor of them.**" If the deed does not have language similar to this it is not a survivorship deed, and the land will not automatically transfer upon the death of a landowner. Survivorship interests can be a great way to hold land between spouses, and can simplify an estate plan, however, there is still some inherent danger in holding land as tenants in survivorship. Survivorship interests are still subject to partition, and the surviving landowner will still need to take additional steps in order to effectively transfer the land upon their death.

Transfer on Death Affidavit:

In the state of Ohio it is possible for any landowner to designate a specific beneficiary to receive land upon the landowner's death. This can be done regardless of how the landowner holds the land. The landowner can designate any number of individuals to receive the land at his death. He can also designate other entities such as a trust, a charity, or an LLC as the beneficiary of the land. The landowner can also revoke or change the beneficiary designation at any time during his life. Transfer on Death Affidavits are a great way to simplify the land transfer process for estate and succession planning.

Holding Land in LLCs:

There are inherent dangers with owning land jointly with another person. The risk of partition is probably the most significant of those concerns. However, an LLC can overcome many of these challenges. Once land is placed into an LLC the owner can then transfer an ownership interest in the LLC to his children rather than the land himself. Because LLC ownership is not subject to partition rights, the new land is no longer at risk of being sold without the consent of all or a majority of the owners. Further, the LLC can put limitations on who is permitted to be an owner and the terms of any potential sale. It could provide a discount for family members to purchase ownership in the future, and provide favorable purchasing provisions making it more likely that the land will be kept in the family. As a farmer you can spend all the time in the world improving and monitoring the soil health on your farm, but if you don't take the time to make sure that land is transferred properly to the next generation all of your work will be for nothing. Understanding how your land is titled, and the tools available to effectively transfer your land should be an important part of each farmer's long term succession plan. If you are not certain how your land is titled, I invite you to take the time to find out. Also, if you are not satisfied with how your land will be transferred to the next generation, call our office to speak to a qualified advisor to determine the best strategy for you.



Dealing with Financial Institutions

By: Kelly and Robert Moore

Banks, investment companies and government agencies are tightening up their policies. It used to be that your local banker had more flexibility to find solutions to your needs. Now, due to increased government regulations, it seems every transaction must be by the book. This article is to help decipher some of the requests the institutions may throw your way or it just may help you have a better relationship with your local institution.

Scenario 1: A loved one passes away. There is a trust and the bank account was titled to the trust or payable on death to the trust. The banker asks you for a Letter of Authority.

What is a Letter of Authority? A Letter of Authority is issued by the probate court. The court issues a Letter of Authority to the Executor. In order to obtain such a document from the probate court, you have to file to open a probate case and submit the Will. The Judge approves the Will and appoints the Executor. The Judge signs and stamps this Letter of Authority verifying that the named Executor has the power to act on behalf of the estate.

In our scenario we are dealing with a bank account owned by a trust or in the alternative, the beneficiary of the account is the trust. Either way, your loved one took time to make the account non-probate. The Trustee of the trust should have the authority to now deal with the account.

So why is the bank asking for a Letter of Authority? What the banker means to ask you for is a Certificate of Trust, not a Letter of Authority. The banker needs a document verifying the trust and the trustee. The banker may have some confusion as to the request. They just know that they need some type of document proving someone has authority to act on behalf of the deceased person. Letter of Authority may be what is required for most of the accounts the bank deals with. The banker may not know what type of document works in your case.

What is a Certificate of Trust? This is a document prepared by the attorney. It certifies that the trust exists and identifies the current acting trustee.

It's like an affidavit signed by the trustee verifying certain facts of the trust. It may be that you have to explain to the banker that what they mean is to ask for is a Certificate of Trust or you may have to have your attorney talk to the institution. It may take a little education and patience on everyone's part but it will soon be figured out.

Scenario 2: A loved one has passed away. The county

FSA office has informed you they will need a Letter of Authority in order to process the 2014 FSA payment. Is this true?

The FSA office bases their request on the fact that they cannot process the payment under the deceased person's social security number. This is a dilemma. If a trust is involved and the land is in the trust it may be the FSA office can use the new TIN (trust taxpayer number). If no trust is involved or the land is not titled to the trust yet, the best thing to do is to let your attorney work with the FSA office to figure out how best to remedy this situation. You may be able to have the attorney's office write a letter verifying the information or you may end up having to apply to the probate court. This is a new situation and each FSA office is different. Our office is working on a couple of ways to best avoid this scenario in the future.

Scenario 3: A great aunt passes away and leaves her Prudential account to her beloved great niece. Her niece is 9 years old. Prudential informs the parents that they cannot release the funds unless the parent is appointed Guardian. WHAT? Aren't parents the legal guardians of their children? Not when you're dealing with a company such as Prudential. One of the parents will have to apply to the probate court to become Guardian of their own child. The guardianship paperwork will allow the parent to open a bank account on behalf of the child. The parent will never have access to this account. Only the child can have access when they turn 18.

The guardian/parent will have to verify to the court each year the account is still active and untouched. After lots of time, money and stressful, heated phone calls with the company, hopefully, the company will pay the money directly to the bank. (I'll let you know the outcome because this is personally happening to me and Rob.) Avoid this headache at all costs! How? Make sure the beloved great aunts, grandparents, and you have your accounts titled to someone or something other than your minor children. Or verify the company policy if an account happens to pay out to a minor. This is the first time I have experienced this. Usually accounts can pay to a minor under the Uniform Transfer to Minors Act. Apparently Prudential has its own set of rules.

The lesson to learn is that there is the legal answer and then there is the answer the institution requires. The real answer usually lies somewhere in between and takes communication and patience to resolve. Stay calm and educate. Or in the alternative, stay calm and call your attorney.



Client Advisory

N E W S L E T T E R



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