

2016

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## Recommended Citation

Hamilton, Neil, "Sustainable Agriculture Land Tenure: The legal rights and duties of entity ownership of Iowa farm land and the next generation of landowners" (2016). *Leopold Center Completed Grant Reports*. 505.

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## **Abstract**

Present landowners need tools to pass on relevant information about current land uses and best management practices to their heirs. This project provided guidance and tools for landowners and their advisers on the development of estate and succession planning documents that address sustainability and resilience for the natural resources involved.

## **Keywords**

Policy, human systems

## **Disciplines**

Agriculture Law



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## Budget:

\$13,422 for year one  
\$18,784 for year two

**Q** What legal tools exist to increase non-operator stewardship of land owned by entities and how can we increase non-operator knowledge and use of these tools?

**A** The legal tools relating to stewardship exist in general terms in both the organizing documents of landowning entities as well as state law, but their applicability and use for enforcing duties relating to agricultural sustainability and resilience are not easily found and remain largely untested.

## Background

Sustainable Agricultural Land Tenure (SALT) Initiative research has focused on the impact of private legal arrangements and documents on sustainable and resilient land use. Research and interviews with farmers, landowners, and their advisors show a strong inclination to transfer land to family members, regardless of whether they are currently farming or how knowledgeable they are about agriculture. This project addressed two critical issues in relation to this trend. First, the challenges and opportunities presented by increased entity ownership of Iowa farmland, and second, increasing off-farm landowner knowledge and appreciation of the land and resilient farm practices.

Project objectives were to:

- Reveal the legal rights, duties, and remedies of interest holders in entities that possess management control of Iowa farmland.
- Identify existing documents, including trusts, corporate bylaws, and partnership agreements that contain language addressing management of assets and prevention of waste.
- Establish a “Legacy Report” pilot project for farmers seeking to pass on information about the sustainable management of their farmland to potential heirs.
- Increase landowner understanding of their capacity to address sustainability and conservation as part of their estate and business succession planning.
- Increase knowledge of legal remedies available to individuals with an interest in farmland assets, whether as a joint-owner, beneficiary, member, or shareholder, in order to prevent mismanagement and waste of the land and its resources.
- Increase the confidence of those with interests in Iowa farmland to enforce their rights and protect soil assets through legal remedies.



**P O L I C Y**

## Approach and methods

As the trend toward non-operator owners creates circumstances in which ownership is increasingly separated from control and placed within corporations, partnerships, trusts, LLCs, and farm management arrangements, it is critical to evaluate the decision-making mechanics of these entities, the duties regarding stewardship of those in control of the entity's resources, and the remedies available to those owning or benefiting from the entity but lacking management control. This was accomplished through examination of existing organizational documents and legal research concerning the statutory and case law governing duties and responsibilities of managers and the remedies available to beneficiaries.

The project team evaluated the usefulness of a "Legacy Report," a document created by owner-operator farmers that records the history of their land and provides information on sustainable land management goals and practices specific to the property. Four Legacy Reports were created by the Allamakee Soil and Water Conservation District (Iowa) based on interviews with the farmers owning the land and historical examination of Natural Resources Conservation Service (NRCS) resources.

## Results and discussion

Examination of existing organizational documents and legal research related to duties and responsibilities of managers and the remedies available to beneficiaries yielded some interesting findings. It revealed that stewardship concerns specifically relating to soil assets are almost wholly missing from the documents establishing farm-owning entities, as well as from the statutory and case law governing the duties and rights of those involved. It is important to note the project's research shows that there are general stewardship protections incorporated into the organizational documents and statutes available for general protection of entity assets. Therefore, the outreach components of the project focused on explaining how these general protections may be applied specifically to agricultural stewardship, sustainability and resilience.

The four initial Legacy Reports were created by the Allamakee Soil and Water Conservation District working with land-owning farmers and relying on historical review of NRCS resources. The farmers for whom Legacy Reports were developed saw the value of having a tangible way to pass on information about the land's history. They also appreciated the opportunity to share their vision for the future use of the land with their heirs who may or may not be farming the land or even living in the same state. The impact of the Legacy Reports on the heirs is more difficult to evaluate and future effects are hard to predict.

## Conclusions

Iowa has strong legal precedent for establishing soil conservation and stewardship as a fundamental duty of all landowners. However, neither Iowa statutes nor case law clearly spell out the duty of stewardship relating to soil assets for those with decision-making authority within farmland-owning entities. There are statutes in place requiring a duty of care for the managers of entities capable of owning land in Iowa. This research revealed significant variations in this duty, depending on the type of entity. For example, partnership members are merely required to avoid actions that are grossly negligent, constitute reckless conduct, intentional misconduct, or are a

knowing violation of law. It is important to note that when bringing an action against a manager, director, majority shareholder, or trustee, the individual bringing the action has the burden of proving misconduct as well as damages. These may be significant hurdles, particularly when attempting to prove economic damages from soil loss.

The project provided valuable information for current owners, managers, and beneficiaries of land-owning entities in Iowa. Continued outreach is essential to inform current owners of their duties and rights, as well as remedies available to them for the breach of care in relation to soil assets. It also is essential for anyone pondering entity ownership. Those establishing the use of entities should be informed of the impact of the laws governing the different duties required of various entities. They also should be aware of the potential impact of the legal documents establishing these entities. A firm foundation has been laid for this outreach through the project's publications and initial presentation and workshops with key stakeholders.

The farm Legacy Reports show the potential for sharing knowledge of the land with future non-farming landowners. There was significant interest in the project from current farming landowners, who expressed a desire to participate and then pass on the information to their potential heirs. The impact of the reports on heirs inheriting land remains to be seen. The sample Legacy Report and the document, "How to Create a Legacy Report," will be valuable in assessing the long-term use and impact of the reports.

## **Impact of results**

Short-term impacts:

- Landowners have gained an understanding of the need to consider sustainability and conservation when discussing estate planning with their advisors.
- Individuals with an interest in farmland assets, whether as a joint-owner, beneficiary, or shareholder, have gained knowledge about legal remedies available to prevent mismanagement and waste of the land and its resources.
- Landowners passed on critical information to potential heirs about the land, how it has been used, and why its use is important to its sustainability and resilience.
- Landowner advisors increased their understanding of the potential to address landowner concerns about stewardship in their estate planning and organizational documents.
- Advisors also increased their knowledge of existing laws available to enforce duties of stewardship for those managing farmland assets for entities.

Measured by distribution of printed materials, visits to online resources, and attendees at workshops and presentations, this information reached approximately 400 individuals during the grant period.

Long-term impacts, which are more speculative:

- Conservation organizations and advisors providing service to landowners and farmers will change the way they provide information about estate and succession planning for landowners and farmers.
- Estate planning documents will contain provisions addressing sustainability and resilience. Evaluation of this outcome was measured through contacts with

members of the Iowa Bar Association's Agricultural Law and Estate Planning Section

- Individuals possessing an interest in land but lacking day-to-day management and decision-making authority will utilize legal remedies to protect the land and its resources.
- Courts will rule to prevent the waste of resources and mismanagement of land assets.
- Stewardship of land resources owned by fractionated interests increased.

## Education and outreach

### *Publications*

- "A Sample Legacy Report," Sarah Berges (2014).
- "How to Write a Legacy Report," Sarah Berges (2014).
- Workshop Report from April 17, 2014

"Rights and Duties of Entity Ownership of Iowa Farm Land," available at: <http://sustainablefarmlease.org/rights-and-duties-of-entity-ownership-of-iowa-farm-land/>

Publications, including the Legacy Report models, brochures on estate and succession planning with conservation as a consideration, and sample provisions for such documents are available through the Ag Law Center's websites, primarily at SustainableFarmLease.org.

Presentations were given to farmers, landowners, and professionals at organizational meetings, such as the American Agricultural Law Association Annual Meeting and the Iowa Bar Association's Agricultural Law and Estate Planning Sections.

The project included a workshop attended by more than 30 professionals involved in some aspect of advising landowners, including attorneys, agency personnel, ISU Extension staff, and nonprofit service providers. This event was a research tool as well as part of the project outreach efforts. The workshop included a performance of "Map of My Kingdom," which was used for educational purposes and as a catalyst for further discussion on land tenure transitions and the legal tools available to ensure sustainability and resilience during and following such transitions.

Drake Ag Law Center staff also spoke at multiple events on the topic of sustainability as it relates to farm succession and entity ownership. These presentations were made by Edward Cox in partnership with Agren, Women Food and Agriculture Network and Women, Land and Legacy prior to his departure from the Center at the end of 2014.

The Drake Ag Law Center will continue to promote this work through presentations for farmer organizations such as PFI and WFAN as well as for other events such as the USDA's Agriculture Outlook Forum. The Center staff will continue to promote the project websites where the content and results of SALT research are shared.

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## Leveraged funds

No additional funds were leveraged for this project.