



Legal Notes

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THE HUDSON VALLEY FARM BUSINESS: *an exciting time*



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When I was growing up in western Orange County, I was never more than a stone's throw away from a farm, and am thrilled to still live in an area where I can so readily enjoy their products. My grandparents and parents were great friends with longtime family farmers, as am I. I also am fortunate to call some of them my clients.

The Hudson Valley has a strong agricultural history, and its proximity to New York City puts the region in a unique position. We are living in an exciting time where people are rediscovering the beauty and value of "farm-to-table," "craft," "heirloom," and "artisanal" products—all of which refer to a genuine, natural product from a traditional farm.

Many city neighborhoods have farmers' markets where residents can enjoy the literal fruits of the Hudson Valley. Couples from New York City pay top dollar for a wedding with an authentic Hudson Valley farm atmosphere. The list goes on, and presents an amazing opportunity for farmers in our region.

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Still, farming requires an extremely high level of commitment and hard labor to work the fields or tend to the animals, to cultivate and distribute its products, construct or acquire buildings and equipment, and ensure the maintenance of those buildings and equipment. Farmers also must become well-versed in financing and cash flow issues, and plan for succession of the farm to family members, key employees, or to a third party. To be a successful farmer, one must be the proverbial jack of all trades—horticulturalist, veterinarian, engineer, contractor, banker, and businessperson.

However, every good business owner knows that a little help goes a long way. It's difficult to navigate the structure of your business, contracts, financing, grant opportunities, municipal and state law compliance, and planning your business and personal affairs together in a way that maximizes all that hard work. The interplay of all the laws that can affect a farmer, including but not limited to the specialized agricultural laws, can be daunting. A good team that is enthusiastic about and experienced in the area is critical.

Like farmers on the farm, there are not many business and legal situations the attorneys here at Blustein, Shapiro, Rich & Barone, LLP can't handle. As a full-service firm, with most of our attorneys born and raised in and around farms, we are uniquely positioned to help Hudson Valley farmers fulfill their goals. We are grateful for the farmers with whom we work, and excited to potentially serve the needs of more. And in any event, to all the farmers out there, we wish you much success, and we can't wait to enjoy your products and services—if we aren't already!



CONGRATULATIONS!!!

BSR&B Associate Megan Conroy was recently honored as an Orange County Rising Star by the Junior League of Orange County, NY, Inc. It was a well-deserved honor for a hard-working and community-minded attorney!

Megan, a graduate of the 2017 Class of Leadership Orange and a member of the New York State Farm Bureau, was also honored in April with the 2018 Outstanding New Lawyer Award from the Women's Bar Association of Orange and Sullivan Counties (WBAOSC).

UPSTATE NEW YORK 2018

Super Lawyers®

Continuing on a legacy of achievement, BSR&B Partners Gardiner "Tad" Barone, Richard J. Shapiro, Austin F. DuBois, and William A. Frank have all again been recognized as Top Rated Lawyers by New York Super Lawyers for 2018.



Gardiner "Tad" Barone
Business Litigation
(7th consecutive honor)



Richard J. Shapiro
Elder Law
(5th consecutive honor)



Austin F. DuBois
Business & Corporate Law
(5th consecutive honor; Rising Stars list)



William A. Frank
State, Local & Municipal Law
(2nd consecutive honor)

Super Lawyers is a national and independent third-party rating service of outstanding lawyers who have attained a high degree of peer recognition and professional achievement. Recognition on the Super Lawyers list is limited to no more than five percent of attorneys, with the distinction of Rising Star being reserved for lawyers aged 40 and younger who have been in practice less than 10 years.

"The firm is pleased to again have four of our attorneys recognized by such a respected rating service in the industry," said BSR&B Managing Partner Michael Blustein. "We are proud to have our own attorneys included amongst the best of the best through an extensive process of independent research, nominations, and evaluations."

PASSING THE PITCHFORK



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Throughout the Autumn season, farmers open their [barn] doors to those looking to experience fall on the farm. Here in the Hudson Valley, locals and visitors alike enjoy apple picking, harvest festivals, and pumpkin-spiced treats.

Agriculture is big business in New York, and it accounts for hundreds of thousands of jobs statewide. According to the Census of Agriculture taken by the U.S. Department of Agriculture in 2012, there were over 650 farms in Orange County, N.Y., spanning over 88,000 acres¹. The New York State Department of Agriculture and Markets estimates that about 20 percent of the state's land area, or over 7 million acres, is farmland². In 2016, the New York agricultural industry was worth \$5.05 billion; the 'Big Apple' was the leading producer of yogurt, cottage cheese, and sour cream in the nation. We actually ranked second nationally for apples, along with snap peas and maple syrup. Some of our other top agricultural products include corn, hay, cattle, and floriculture³.

So, how does a family farm continue to operate as the farmer gets older, falls ill, or passes away? The 2012 Census of Agriculture reports that New York is among 22 states with a decrease in the number of farms in the last decade. The Small Business Administration reports that less than 33 percent of family-owned businesses survive the transition from the first generation to the second, and that number is further reduced upon the transition to the third generation. As Austin DuBois describes in his article in this newsletter, *The Hudson Valley Farm Business: An Exciting Time*, farming is a unique industry requiring knowledge in a number of areas; not just anyone can take over operations. It takes comprehensive business and estate planning to ensure that the farm transitions as intended and continues to succeed.

Planning for Disability

Through proper and proactive planning, the farmer can protect the farm in the event the farmer becomes disabled without prematurely giving up control of the farm. Importantly, having a plan in place can prevent the farm business from stagnating in the event of the farmer's disability, and dramatically reduce the risk of losing the farm when facing nursing home care can be mitigated.

Having a well-drafted **Durable Financial Power of Attorney** in which the farmer appoints an agent to handle his/her financial and real estate matters is important in planning for disability. The farmer should also have a **Health Care Proxy**, in which an agent is appointed to make health care decisions on behalf of the farmer. Having these documents in place will allow the agent to assist during the farmer's disability without the need to bring a guardianship action. A **Guardianship** is a costly and time-consuming proceeding in which a court

appoints a person to make the financial and/or health care decisions of the incapacitated farmer.

Planning for disability shouldn't stop with the Power of Attorney and Health Care Proxy documents. If the farmer needs long-term care at home or in a nursing home, additional planning may be needed to preserve the farm from the costs associated with long-term care and for the farmer to qualify for Medicaid.

Succession Planning

Because the farm is often not only a business, but also a home and a family legacy, farm transition planning is a delicate process. For farm families, "equal" may not always be fair. With fewer farm children returning to operate the family farm, the farmer must carefully consider his/her objectives and the impact on the future of the farm if it is distributed to all children equally.

A transition strategy is necessary to make sure that each child receives a share of the estate without subjecting the farm to dissolution and/or liquidation. A comprehensive transition plan may include some, or all of the following:

1. The farm business can (and should) be operating under a formal entity structure, such as a Limited Liability Company (LLC) or corporation. The farmer should be sure to have LLC or corporate documents drafted to account for the transition of the farm business. Those documents should also include terms and restrictions that reflect the farmer's intent. To properly effectuate the transfer, the formation documents, buy-sell agreement, and lease agreements should all be consistent in facilitating the farmer's objective.
2. Often the farm is a farmer's largest asset. If the farm isn't being distributed to the next generation in equal shares, making sure there are enough other assets in the estate to offset the distribution of the farm may be important in achieving the farmer's estate planning goals. Life insurance with accurate beneficiary designations can help balance the assets.
3. Having well-drafted estate planning documents in place, such as living trusts and a last will and testament, will ensure the distribution of the farmer's assets to his/her intended beneficiaries in accordance with his/her ultimate objectives.

A farm can be a complex asset, but its transition can be simplified with proper planning during the farmer's lifetime. With some creativity and well-drafted documents, a customized protection and transition plan can be achieved to ensure that the farm continues for generations.

GLOSSARY:

Durable Financial Power of Attorney: Grants someone legal authority to act on your behalf for financial issues in the event that you become incapacitated and are unable to make those decisions yourself

Health Care Proxy: Grants someone legal authority to act on your behalf for health-related issues in the event that you become incapacitated and are unable to make those decisions yourself

Guardianship: Proceeding in which a court appoints a person to make the financial and/or health care decisions of an incapacitated person

¹United States Department of Agriculture, 2012 Census of Agriculture (https://www.agcensus.usda.gov/Publications/2012/Full_Report/)

²NYS Department of Agriculture and Markets (<https://www.agriculture.ny.gov/>)

³New York Farm Bureau, "New York Agriculture" (<https://www.nyfb.org/about/about-ny-ag>)

ARE FARM BREWERIES THE ANSWER FOR A SUFFERING AGRICULTURE INDUSTRY?



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In the Hudson Valley, we have a longstanding tradition of farm wineries. However, today with both national and local family brands of craft beers, spirits, and ciders coming into the mix, we have numerous breweries, distilleries, and cideries all right here in Orange County. In fact, these are the new weekend hot spots.

But what is a farm brewery, distillery, or cidery? In 2013, New York passed the New York Farm Brewery Law, which mirrored the highly successful 1976 Farm Winery Act. In short, the law allowed the State Liquor Authority to issue a new class of “farm” alcohol manufacturer licenses for craft breweries. The license would allow craft breweries to also conduct on-site tastings. Today, the New York Alcoholic Beverage Control Law has expanded “farm” licenses to cover each type of alcohol (and not just wine, as it had traditionally). Essentially, being a farm brewery, winery, distillery, or cidery means that, as a business, you:

- Receive a reduced price in alcohol licensing;
- Are limited in the gallons of alcohol you can produce in a year;
- Can manufacture and self-distribute; and
- Pledge to use a certain percentage of New York state grown ingredients.

On the surface, laws encouraging these types of businesses are beneficial because “locally sourced” is better for the environment and seems to be in vogue. However, even more exciting are the deep economic impacts of the law, since on average New Yorkers drink more beer than wine or hard liquor⁴. But is this the answer to all our agriculture woes in New York? More importantly, why should traditional farmers pay any attention to this new wave of crop demands?

Interestingly, in the late 1800’s, New York produced as much as 90 percent of the hops used to make beer around the country⁵. Prohibition eliminated this production, and until recently, New York has never gotten back to its peak production rates. Furthermore, it is no secret that the farming industry, in general, has been in decline within the past decade. As any farmer will tell you, diversifying crops is often the key to survival. This boom in farm breweries, cideries, and distilleries is today’s opportunity for farmers to achieve that goal of diversifying. The statutory requirement of having New York State-grown ingredients has opened up an enormous need for crop-specific agriculture, and has generated opportunities for New York farmers to profit.

Specifically, Section 3 of the Alcoholic Beverage Control Law provides that to become New York State-licensed as a:

1. **Farm Brewery**, 60 percent of both your hops and other ingredients must be produced in New York (*note: the percentage will jump to 90 percent on January 1, 2024*).
2. **Farm Cidery**, you must use 100 percent New York State apples/pome fruits.
3. **Farm Distillery**, a total of 75 percent of all of your ingredients must be grown in New York State.
4. **Farm Winery**, 100 percent of your grapes must be grown in New York State.

By requiring New York-grown ingredients, this legislation has created a secure pathway to market for farmers. **But what if you want to literally enjoy the fruits of your labor?** Farmers can always choose to supplement their farm income by starting their own on-site brewery, cidery, distillery, or winery. Moreover, Orange County farmers are constantly and consistently being contacted by developers looking for farmland to build solar farms, residential subdivisions, and commercial warehouses. But even for those farmers who don’t themselves plan to become a part of the growing alcohol manufacturing business, they might consider leasing their land to a local farm brewery, winery, cidery and/or distillery.

Farm breweries, distilleries, and cideries, along with the well-known wineries, offer promising economic opportunities for New York farmers. Be warned that while the economic advantages are enticing, having knowledgeable legal counsel with experience in land use and, in particular, right-to-farm type laws is essential for a smooth transition to becoming either a grower or manufacturer. Look for attorneys with experience representing landowners in front of local planning and zoning boards. That way you can focus more on the growing and brewing, and less time navigating the legal process.

⁴Vinepair, MAPS: THE STATES THAT DRINK THE MOST WINE, BEER & SPIRITS (August 24, 2015) (<https://vinepair.com/wine-blog/maps-the-states-that-drink-the-most-wine-beer-spirits/>).
⁵Northeast Hop Alliance, History of Hops in the Northeast (2018) (<https://www.northeasthopalliance.org/history-of-hops-in-the-northeast>).

SECURE YOUR LEGACY

Estate Planning Workshop for Today’s American Family

Tues., Dec. 11th | Thurs., Jan. 10th | Tues., Feb. 12th | Thurs., Mar. 14th

3 p.m. – 6 p.m. | BSR&B Education Center (1st Floor), 10 Matthews St., Goshen, NY

Reserve your spot today and get the critical information you need to work with an attorney to create an estate plan that protects you and your loved ones.

Call Donna at 845.291.0011 x242
or email dwood@mid-hudsonlaw.com

OUR WORKSHOPS ARE FREE, BUT SEATING IS LIMITED.