Do You Have a “Right to Farm” in Colorado, Wyoming or Nebraska?
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Beginning in the 1980s, farmers and ranchers became increasingly concerned as more and more people began relocating to rural areas outside of cities and towns, subdividing lands, reducing available farmland, and complaining that longstanding farms and ranches were a nuisance to their brand-new way of life. As rural residences increased substantially across the country, agricultural operations often became the subject of nuisance lawsuits. These lawsuits often claimed that livestock (cattle, horses, sheep, chickens, pigs and goats) and the production of our food and crops was a “nuisance,” because they create dust, noise and obnoxious odors which interfere with the nonagricultural users’ use and enjoyment of their rural property. As a result, many agricultural operations were forced out of business and others were discouraged from making investments in improvements and new technologies.

To protect the agricultural way of life and sustainability of farming and ranching, legislators across the county began enacting laws commonly known as “The Right to Farm.” Right to Farm laws generally deny nuisance lawsuits against farmers and ranchers who use accepted standard farming practices and have been in existence prior to the adjacent nonagricultural land uses. In addition, many Right to Farm laws limit or deny the ability of state and local governments to adopt ordinances or pass resolutions which may interfere with legitimate and law-abiding agricultural operations.

Yet, what do these laws mean? Do you really have a “right to farm?” Do you have a right to make any agricultural use of your private property? The answer, of course, is . . . it depends! To be more specific, it really depends on where you live. Right to Farm laws vary across the country and depending on which side of the fence you live, they may solve all your problems, or do nothing for you whatsoever.

For example, in Colorado, the Right to Farm law weighs heavily in favor of prohibiting nuisance lawsuits against all agricultural operations, whether large or small, or commercial or private. The statute provides that “an agricultural operation shall not be found to be a public or private nuisance if the agricultural operation alleged to be a nuisance employs methods or practices that are commonly or reasonably associated with agricultural production.” In addition, and perhaps most importantly, the agricultural operation must be established prior to the use of the adjacent property for nonagricultural activities. In Colorado, agriculture is defined broadly to include the cultivation of plants, fruits, vegetables, flowers, grapevines, grass
and ornamental trees; the storage, processing and distribution of milk and milk products; livestock and farm animals; poultry, including chickens and turkeys; bee hives; and “any and all other forms of farm products and farm production.”

In Colorado, any ordinance or resolution of a local government – such as a particular town, city, or county – that makes the operation of any agricultural operation a nuisance or provides for the closure thereof as a nuisance, is void, unless the agricultural landowner voluntarily annexes his property into city limits. Thus, if a farmer or rancher in Colorado, “voluntarily” annexes portions of his farm or ranch into city limits, then he risks that one day their agricultural operation may be found to be a nuisance and ordered closed by ordinance or resolution of their local government. Obviously, farmers and ranchers in Colorado should think twice prior to “voluntarily” seeking to annex their property into city limits.

Finally, in Colorado, while local governments may not declare agricultural operations located outside city limits as a nuisance, local governments may adopt ordinances or pass resolutions that provide additional protections for agricultural operations, so long as such additional protections do not prevent the agricultural landowner from seeking approval to put their land into alternative use.

As an interesting side note to the Right to Farm law in Colorado, it remains to be seen whether such law will protect the rights of agricultural operations that cultivate, store, process or distribute marijuana for either medicinal or recreational purposes. Do local governments have the right to declare marijuana operations as a nuisance? Is a marijuana operation “agriculture?” Due to the unparalleled explosion of the marijuana industry in Colorado, it is only a matter of time before this provision is tested in the state courts.

The Right to Farm law in Colorado would appear to protect virtually any person engaged in agriculture, whether he or she is merely engaged in agriculture for personal reasons, such as owning a handful of horses for riding, sheep for wool, chickens for eggs, or pigs as a “garbage disposal.” He or she does not need to own a significant cattle operation or otherwise engage in the commercial production and sale of farm and ranch products to be protected under the Right to Farm law in Colorado.

In Wyoming, however, a person owning livestock or growing crops for personal use is not protected under the Right to Farm law. Rather, in Wyoming, the Right to Farm law only protects those engaged in the commercial production and sale of farm and ranch products. While the law in Wyoming protects the same kinds of operations as those in Colorado, the law in Wyoming specifically does not protect farms and ranches that own big game, such as deer and elk, or game birds, such as turkeys and pheasants.
Otherwise, the provisions of the Wyoming law are very similar to the Colorado law. The Wyoming law does not address whether local governments may prohibit, or protect, agricultural operations.

If you are a landowner in Wyoming who wants to make sure you are protected by the Right to Farm law, you would be advised to occasionally sell some of your “products” in order to qualify as a “commercial” farm and ranch operation. While the law in Wyoming states that it was enacted “to forever guarantee” the right to engage in farming and ranching in Wyoming, such “guarantee” clearly only applies to those who are engaged in the “commercial production and sale” of their farm and ranch products. The term “commercial” is not defined in the law and has not been clarified by any court.

The Right to Farm law in Nebraska is more similar to the law in Wyoming than the law in Colorado. The law in Nebraska only protects farm operations that are “devoted to the commercial production of farm products.” In addition, in Nebraska, in order to receive the protections of the Right to Farm law, you must own at least ten acres which are used for or devoted to the commercial production of farm products. Otherwise, the types of farm operations protected under the law in Nebraska are similar to both Colorado and Wyoming, except that Nebraska has special provisions for public grain warehouses.

Unfortunately, in any of the three states discussed herein, new farmers and ranchers have no protection under the law unless you can afford to buy an existing farm or ranch. In every instance – despite the intricacies between each state – to be protected by the law, the farm or ranching operation must have been in existence prior to the adjacent nonagricultural use. Changes in ownership generally are protected under the Right to Farm laws. However, if you purchase a small parcel of land in a rural subdivision hoping to start a small farm, or own a few animals, you probably won’t be protected, especially if your neighbors are there first.

If you believe that your rights as a farmer or rancher have not been protected, or have been threatened by encroaching city slickers looking to move outside city limits, then you are strongly encouraged to speak to an attorney concerning the Right to Farm laws in your state and local community. Do you have a right to farm? In some cases, you most certainly do and will be protected by the law. In others . . . not so much. Like so much else in life, it all depends on where you live.