

The Kansas Corporate Farming Laws

Current Law

- Kansas corporate farming laws restrict the power of certain corporations to engage in farming or agriculture or to acquire, purchase, or otherwise obtain land that is used or usable for agricultural production.
 - Pursuant to K.S.A. 17-5908, no corporation, trust, limited liability company, limited partnership or corporate partnership may either directly or indirectly, own, acquire or otherwise obtain or lease any agricultural land in Kansas.
 - There are exceptions to this rule.
- **Exceptions** – The following can own, acquire, or otherwise obtain or lease agricultural land in Kansas:
 - **Family Farm Corporation:** Corporations founded for the purpose of farming and the ownership of agricultural land. The majority of voting stock must be held by persons who are related to each other, all stockholders are natural persons or persons acting a fiduciary capacity for the benefit of natural persons, and at least one of the stockholders must reside on the farm or be actively engaged in the labor or management of the farming operation. K.S.A. 17-5903(j)
 - **Authorized Farm Corporation:** Kansas corporations, other than family farm corporations, where all of the incorporators are Kansas residents, family farm corporations, or family farm limited liability agricultural companies. K.S.A. 17-5903(k)
 - **Limited Liability Agricultural Company:** An LLC founded for the purposes of farming and ownership of agricultural land in which the members do not exceed 10; the members are all natural persons, family farm corporations, family farm limited liability agricultural companies, persons acting in a fiduciary capacity for the benefit of natural persons, family farm corporations, family farm limited liability agricultural companies or nonprofit corporations, or general partnerships other than corporate partnerships formed under the laws of the state of Kansas; and if all members are natural person at least one member must be a person residing on the farm or actively engaged in labor or management of the farming operation. K.S.A. 17-5903(u).
 - **Family Farm Limited Liability Agricultural Company:** An LLC founded for the purpose of farming and ownership of agricultural land which the majority of members are related to each other, the members are natural persons or persons acting in a fiduciary capacity for the benefit of natural persons, and at least one of the members is a person residing on the farm or actively engaged in the labor or management of the farming operation. K.S.A. 17-5903(w)
 - **Limited Agricultural Partnership:** A partnership founded for the purpose of farming and ownership of agricultural land in which the partners do not exceed 10 in number; the partners are all natural persons, persons acting in a fiduciary capacity for the benefit of natural persons or nonprofit corporations, or general partnerships other than corporate partnerships; and at least one of the general

partners is a person residing on the farm or actively engaged in the labor or management of the farming operation. K.S.A. 17-5903(d).

- **Family Trust:** A trust in which a majority of the equitable interest in the trust is held by and the majority of the beneficiaries are persons related to each other and all of the beneficiaries are natural persons, are persons acting in a fiduciary capacity, other than as trustee for a trust, or are nonprofit corporations. K.S.A. 17-5903(m).
- **Authorized Trust or Testamentary Trust:** An authorized trust is a trust other than a family trust in which the beneficiaries do not exceed 15 in number; the beneficiaries are all natural persons, are persons acting in a fiduciary capacity, other than as trustee for a trust, or are nonprofit corporations; and the gross income thereof is not exempt from taxation under the laws of either the United States or the State of Kansas.
- There are many situations in which the restrictions do not apply. K.S.A. 17-5904(a)(1) through (18) list the exceptions. The pertinent ones for our purposes would be:
 - Ag land held or leased by a corporation or LLC for use as a:
 - *feedlot,*
 - *poultry confinement facility, or*
 - *rabbit confinement facility;*
 - Ag land held or leased by a corporation for the purpose of the production of timber, forest products, nursery products or sod;
 - Ag land used for the commercial production and conditioning of seed for sale or resale as seed or for the growing of alfalfa;
 - Ag land held or leased by a corporation, trust, LLC, LP or corporate partnership for use as a:
 - *dairy production facility* or
 - *swine facility.*
 - Approval of a dairy or swine facility, however, must first be approved in an individual county by the county commission pursuant to K.S.A. 17-5907 or K.S.A. 17-5908.

Kansas Department of Agriculture Policy Proposal:

- Kansas Attorney General, Derek Schmidt, issued an opinion on January 2, 2013, following a request from Kansas Secretary of Agriculture Dale Rodman for an opinion on the constitutionality of current corporate farming laws in Kansas.
- The opinion stated that the exception to the law for an authorized farm corporation is likely unconstitutional under the Dormant Commerce Clause of the U.S. Constitution because the term is defined to include only Kansas corporations and is therefore facially discriminatory.
- The Attorney General Opinion prompted KDA to introduce SB 191. This legislation is an attempt to repeal the Kansas corporate farming laws. KDA has proposed this legislation because it believes that by repealing this law Kansas will be more competitive with other states.
 - The legislation would make all business entities eligible to directly or indirectly, own, acquire, or otherwise obtain or lease any agricultural land in Kansas. It would also remove the requirement that a county commission first approve dairy or swine facilities in an individual county.

Current KLA Policy:

- KLA does not have a policy resolution directly pertaining to Kansas corporate farming laws.
- During the 2013 legislative meeting, however, the Board of Directors, following a recommendation from members present at the legislative meeting, decided to support SB 191.
- It is expected that KLA will develop a policy resolution at the 2013 convention, and KLA member input is requested at the 2013 roundtable discussions.

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