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The Farmer's Right to Counsel: Why Every Farmer Should Hire an Attorney

My Grandpa was a farmer for over 80 years in rural Nebraska. My Uncle still farms in rural Nebraska. I am a descendent of farmers, most of whom farmed in areas far removed from the lives of city folk. Farm culture is in my blood.

When writing this article, it occurred to me that none of my farmer relatives, to the best of my knowledge, ever had an attorney or, more likely, even knew an attorney. The terms of real estate and business deals were finalized with a handshake. Due diligence consisted of a few basic questions to the seller over a coffee (or beer). The "boundary dispute" went undisputed. Unfortunately, in the words of Bob Dylan, the times they are a-changin'.

It goes without saying that today's society is litigious. A few hours of afternoon television watching will teach you that the best way to earn riches is not by working hard but, rather, to sue the ne'er-do-well who rear-ended your pick-up. This litigious mindset has also reared its head in ranching law. Property disputes frequently end up in court. My recent experience at the Café Chats at the CCA Annual Convention only bolstered this opinion. I talked to many ranchers at the event. The number of legal issues that modern ranchers currently face is, at times, overwhelming. Hence, the reason this article was written. Truly, any ranching or farming operation with even modest revenue should hire an experienced attorney to help them avoid the myriad of mistakes experienced in this industry.

Ranching or agricultural law, as the name insinuates, deals with issues affecting ranchers and farmers. Legal issues that often arise include issues related to business formation, real estate transactions, contracts, easement analysis and disputes, title and access disputes, land use and zoning, water law, environmental issues, estate planning, and boundary line disputes.

My expertise is in real estate law. Although the legal issues that I handle are varied, some common issues that I encounter include:

1. **Boundary Disputes.** Boundary disputes typically arise when a fence or an improvement encroaches onto another's property. There are many arguments that a farmer can use to defeat or prosecute a boundary related claim. For instance, in Colorado, a boundary line can be formally adjusted in court by arguing that the doctrine of acquiescence applies. This means a property owner can formally confirm a boundary line (that is not the actual pinned boundary line) if, for 20 consecutive years, the applicable property owners mutually agreed, with full knowledge and consent, that the boundary between the two properties was in a specific

location.¹ In Colorado, a person can also claim ownership over a portion of property if he prevails on an adverse possession claim; a claim whereby someone can become record title owner of property if the person's (and/or his predecessors) possession of the disputed property was actual, adverse, hostile, under a claim of right, exclusive, uninterrupted for 18 years, and the possessor (and/or his predecessor) had a good faith and reasonable belief that he or she owned the property.²

2. **Easement and Access Disputes.** An easement is a limited non-possessory right to use or enter onto the property of another which obligates the owner of the land to not interfere with the authorized uses of the easement.³ An easement can be created expressly or by implication. In Colorado, all too often, the real property records do not substantiate legal access to a property, causing ranchers to be unable to travel to and from their property, drive cattle where necessary, and many other issues. In this situation, to obtain legal access, a rancher can argue that there was an "implied easement" to utilize another's property for access. Sometimes, under certain circumstances, a property owner can privately condemn access. Other easement issues that I have seen include cases where the express terms of an easement are being violated by the grantee/neighbor. To resolve this problem, one option is to request that a court order the easement violation to stop by way of a preliminary, and then permanent, injunction.

3. **Title Issues.** Information contained in deeds, easements, mortgages, judgments, and liens are frequently inaccurate or unclear. These errors can cloud title to your property, devalue your property and, sometimes, make your property unmarketable. For example, a conveyance deed for a real estate deal that was supposed to include 650 acres, in reality, may only describe 600 acres. Another common title defect occurs when a mortgage that was supposed to be paid-off and released was never, in fact, paid-off and released.

In short, there is ample room for legal error in the ranching industry. That said, there is also reason for hope. If you hire an attorney on the front-end of a deal (*i.e.*, before you close on any real estate or business deal), many mistakes will be avoided. Similarly, if a property dispute arises while you own your property, a good attorney can assist with negotiating a satisfactory settlement or can help you litigate toward a desired outcome. Indeed, an attorney can handle the legal documents and lawsuits, so that you can concentrate on running your business.

This begs the question, who should you hire? Good question. I recommend a competent and trustworthy attorney, and one that you can see yourself getting along with. The attorney-client relationship can, sometimes, evolve into a friendship. Whatever you do, please do not expect your attorney to always be available on a moment's notice. The attorney who is not busy is usually not a good attorney. Hiring a busy attorney, trust me, is a good thing. A good attorney will also communicate with you openly and honestly, even if it is to give you opinions you don't necessarily want to hear. Please also do not solely focus on the attorney's rate when deciding who to hire. Often, but not always, a good attorney is expensive. Regardless of the attorney's rate, however, a good attorney will likely save you money in the long run by avoiding mistakes and mitigating risk.

¹ *Forristall v. Ansley*, 462 P.2d 116, 119 (Colo. 1969); C.R.S. § 38-44-109.

² *Welsch v. Smith*, 113 P.3d 1284, 1287 (Colo. App. 2005); C.R.S. § 38-41-101.

³ *Matoush v. Lovingood*, 177 P.3d 1262, 1265 (Colo. 2008).

As we finish up, I find myself wishing my Grandpa was still around to read this. He would have been tickled pink to see a published article about farming written by his grandson. I wonder if he would have hired me? Happy farming.