

The Farmer's Legal Guide to Producer Marketing Associations



The Farmer's Legal Guide to Producer Marketing Associations

By Doug O'Brien, Neil D. Hamilton, and Robert Luedeman

September 2005
Drake University Agricultural Law Center ©

DISCLAIMER

The information in this book is intended for use as educational material to assist farmers and their advisors in understanding various laws, regulations, and business practices. The book is not intended, and should not be used, as a substitute or replacement for individual legal advice. Each person or group should consult a lawyer and the responsible local, state, or federal officials prior to utilizing these materials to make decisions about the creation and operation of a producer association. Reasonable efforts have been made to ensure the accuracy of the information contained in this book; however, the content and interpretation of laws and regulations are subject to change. The effect of future legislative, administrative, and judicial developments cannot be predicted. For these reasons, the utilization of these materials by any person represents an agreement to hold harmless the authors, the Agricultural Law Center, Drake University and the Law School, the Farm Credit System Foundation, Inc., the United States Department of Agriculture Risk Management Agency, Community Outreach and Assistance Partnership Program, and the Iowa Department of Agriculture and Land Stewardship for any liability, claims, damages, or expenses that may be incurred by any person as a result of reference to or reliance on the information contained in the book.

Support for the research and drafting of this book was provided by the USDA Risk Management Agency Community Outreach and Assistance Partnership Project and the Iowa Department of Agriculture and Land Stewardship.

Farm Credit System Foundation, Inc., provided support for publication. Financial support provided by the Farm Credit System Foundation, Inc. is made possible by contributions from directors, employees, and the institutions of the Farm Credit System.



**THE FARM
CREDIT SYSTEM**
FOUNDATION, INC.



Cover Images:

Chickens, photo by Jo Robinson, courtesy of www.eatwild.com; piglets, strawberries, and grapes, courtesy of Agricultural Research Service, USDA; beans and parsnips, courtesy of Drake University Agricultural Law Center; cow, photo by Todd Kimm, courtesy of Practical Farmers of Iowa and Naturally Iowa, LLC.

DEDICATION

*This book is dedicated to all farmers
working together to sustain their communities.*

The authors and Drake Agricultural Law Center do not endeavor to provide legal advice. Any information provided in this publication is not intended to be legal advice, nor is it intended to be a substitute for legal services from a competent professional. This work is supported in part by the U.S. Department of Agriculture under Agreement No. 59-8201-9-115, and any opinions, findings, conclusions, or recommendations expressed in the material in this publication do not necessarily reflect the view of the U.S. Department of Agriculture.

No part of this book may be reproduced in any manner whatsoever without written permission except in the case of brief quotations in articles and reviews.

Drake University and the USDA are Equal Opportunity Employers. Drake University admits students without regard to age, sex, race, color, religion, national or ethnic origin or handicap to all the rights, privileges, programs and activities generally accorded or made available to students at the University. It does not discriminate on the basis of age, race, sex, religion, color, national or ethnic origin, or handicap in administration of its educational policies, admission policies, scholarship and loan programs, and athletic and other University administered programs. The Director of Human Resources has been designated coordinator of the Title IX, Title VI, and § 504 regulations. Any inquiries about these laws should be referred to the Director of Human Resources at 515.271.3133.

Additional copies can be purchased for \$12.00 from:

Drake University Agricultural Law Center
2507 University Avenue
Des Moines, Iowa 50311
Call (515) 271-4956 for information on volume discounts
for orders of 20 copies or more.

ISBN – 0-9671556-1-4

ACKNOWLEDGEMENTS

The authors would like to thank the people who helped make this book possible.

The Agricultural Law Center at Drake University was assisted in this project by a number of institutions. The USDA Risk Management Agency, Community Outreach and Assistance Partnership Program provided support for creating the materials as well as for sponsoring the related National Workshop, “Creating Opportunity Through Joint Producer Initiatives” held at Drake University on September 8 and 9, 2005 under agreement #04IE08310123. The Iowa Department of Agriculture and Land Stewardship provided partial funding for research and drafting of the book through a specialty crop grant.

The Farm Credit System Foundation, Inc., provided financial support for publishing the book, helping to make it available to a wider audience. Financial support provided by the Farm Credit System Foundation, Inc. is made possible by contributions from directors, employees, and the institutions of the Farm Credit System.

Christine Pardee, co-director of the Center’s State and Local Food Policy Project and co-planner of the National Workshop, spent her evenings and weekends finalizing the design and typesetting this book, the completion of which would not have been possible without her exemplary dedication and skills. Megan Owens created some of the initial designs and our legal intern Shakti provided comments on early drafts and gathered information for the appendix. Reetu Bansal helped perform the arduous task of the final word processing.

This project is due in part to the cooperative relationship between the University of Arkansas Law School National Agricultural Law Center and the Drake University Agricultural Law Center. Both of the Centers provide support for Doug O’Brien’s work and are an excellent example of what can happen when people work together. Thank you to Michael Roberts and Harrison Pittman at the National Center for being ready resources.

Finally, thank you to the real experts on producer marketing associations, the farmers and advisors who are the lifeblood of these groups. We have spoken with many people over the years, and their experiences have informed every page of this book. At the risk of excluding many, we would like to mention a few who were especially helpful in creating this project: Kelly Biensen, Melissa Hughes, Tom Lacina, Rich Malm, Steve Williams, and Paul Willis.

ABOUT THE AUTHORS

Doug O'Brien works with the Drake Agricultural Law Center on research and writing projects, and teaches occasional classes at the Drake University School of Law. He is also Research Assistant Professor at the University of Arkansas Law School at the National Agricultural Law Center. He has a B.A. from Loras College, a J.D. from the University of Iowa, and an LL.M. from the University of Arkansas Law School Graduate Agricultural Law Program. Doug grew up on a diversified farm in Dubuque County, Iowa. He has clerked for Justice Jerry L. Larson of the Iowa Supreme Court, served as Congress Leonard Boswell's (IA) Legislative Assistant in Washington D.C., was Legal Specialist in the USDA-GIPSA, Packers and Stockyard's Program's National Hog Office in Des Moines, and was staff attorney for the Organization for Competitive Markets. Doug was also a counsel for the U.S. Senate Agriculture Committee from 2001 to 2004. He has published numerous articles, primarily on livestock marketing and consolidation issues. He serves on the boards of Farmers' Legal Action Group and the Church's Center for Land and People.

Neil D. Hamilton is the Dwight D. Opperman Chair of Law and Director of the Agricultural Law Center at Drake University Law School in Des Moines, Iowa. He lives with his wife Khanh on a 10 acre garden farm, Sunstead, near Waukee, Iowa, where they raise fresh vegetables for several local restaurants. He grew up on a family farm in Adams County, Iowa, where his family has farmed since 1872. He has a B.S. from Iowa State Univ., 1976 in Forestry and Economics, and a J.D. from the University of Iowa. He has taught agricultural law for 25 years and has written a series of books and articles for farmers and lawyers. He is past-president of the American Agricultural Law Association (AALA) and author of the nationally award winning book *What Farmers Need to Know About Environmental Law* (1990). He also authored *A Livestock Producer's Guide to: Nuisance, Land Use Control, and Environmental Law* (1992), *A Farmer's Legal Guide to Production Contracts* (Top Producer/ Farm Journal 1995) and *The Legal Guide for Direct Farm Marketing* (SARE, July 1999). He serves on a number of boards including the Leopold Center for Sustainable Agriculture at Iowa State, the Iowa Natural Heritage Foundation, the Seed Savers Exchange, and as chair of the Iowa Food Policy Council.

Robert Luedeman is an attorney in private practice in Des Moines, Iowa where he has worked with producer marketing associations. He has a BA from California State University, Long Beach, a JD from Drake University, and an LL.M. from the University of Arkansas Law School Graduate Agricultural Law Program. Prior to his involvement in the legal field he was a journeyman aircraft mechanic.

DRAKE UNIVERSITY AGRICULTURAL LAW CENTER

Drake's Agricultural Law Center, founded in 1983, is an internationally recognized Center that provides opportunities to study how the law shapes our food system and influences the ability of the agricultural sector to produce, market and utilize agricultural products. The Center supports an array of courses, publications, conferences, research initiatives and a certification program in food and agricultural law at the Drake University School of Law. Students learn about legal issues involving the full scope of food and agriculture, including marketing and finance; biotechnology; international trade; tax planning; soil and water conservation; land use and environmental issues; food safety; and federal farm programs. The Center also hosts international law scholars to study U.S. food and agricultural law and policy through the Lorvellec International Food Law Scholar program.

To learn more about the Center and its work on state and local food policy issues, visit the web sites: www.law.drake.edu/centers/default.aspx?pageID=aboutAgCtr and www.statefoodpolicy.org.

Table of Contents

CHAPTER ONE	
Introduction.....	1
CHAPTER TWO	
Business fundamentals and marketing.....	5
CHAPTER THREE	
Joint producer marketing enterprises.....	17
CHAPTER FOUR	
Legal business organizations.....	25
CHAPTER FIVE	
Financing.....	47
CHAPTER SIX	
Risk management.....	67
CHAPTER SEVEN	
Contract law.....	83
CHAPTER EIGHT	
Federal laws regulating agricultural sales.....	93
APPENDIX	
State & Federal agency contacts.....	103
INDEX	114