

Session 5: Quick Shop 3 - Legal Issues for Urban Farmers/Engage a Lawyer

Jenny: We're going to focus on the role of lawyers as direct representation to farmers and people in the community. Farming and running food businesses share a lot of similarities with a business in any other sectors. There are laws and rules that have to be complied with, contracts, liability, and marketing issues. These are all areas where lawyers can play a big role in making your business thrive and not face issues down the road. There are a number of specific areas of the law that affect urban farmers and people running businesses in cities:

- Transactional law issues
- Land transfer/acquisition issues
- Estate issues
- Negotiating contracts
- Corporate formation
- Coop formation
- Tax issues
- Environmental/land use laws
- Storm water runoff issues
- Soil quality
- Board of health issues
- Employment issues
- Intellectual property issues
- Trademark/labeling
- Energy opportunities

A lot of attorneys have reduced rates for small businesses, towns, etc. There are opportunities for free legal advice, and we will touch on that later.

Alli: There will be a lot of repetition in our presentation, but when it comes to legal things I think that's a good thing.

Business formation – Recognize that farming is a business, have someone help decide what status is right for you – non-profit, for-profit, etc.

Employment issues - This is a big one. Laws that are particular to farming are: volunteers – as a general rule if you are a for-profit business you cannot have volunteers. If you have people working for you, they are employees.

Interns – Under the federal law there is a six prong test to tell if someone is an intern and you can not pay them.

Minimum wage/overtime – If you are engaging in agricultural activities, you are often exempt from minimum wage and over time. Measured in “Man Days,” if you have fewer than six full time employees or less you don't have to pay minimum wage.

These are tricky questions, talk to a lawyer to find out if you qualify for these exceptions.

There is whole process to trade marking a name that can depend on if you are selling just in state or if you are crossing state lines.

If you're buying land you will have to engage a lawyer at some point. You don't have to engage a lawyer to lease land, though you may want one to review your contract.

Food safety modernization act – We've been working on this a lot at our clinic over the past year. A lot of small farmers are going to be exempt from the rules. You need to understand what the rules mean for you and your business. They are very confusing, and there is a lot of uncertainty as to what they will mean when they are finalized. If you do any processing of any sort, you suddenly become a facility under the FDA and you have to meet a new set of regulations.

MA has a cottage food law which allows you to do that in your home kitchen with some limits.

In terms of Boston urban farming we are putting together a guide that will help people get started in the farming process in Boston. If you're going to have a farm bigger than an acre you will have to get a conditional use permit. You will want a lawyer to walk you through this purpose.

If you are outside of Boston, having a lawyer help you look at zoning and what is allowed and what isn't allowed is very helpful.

Jenny: The reason you may want a lawyer for the appeal for a permit is you have to go to court and there are certain things you will need to have been done already.

Jenny: Those are the legal issues at hand, now we will talk about the resources available to you.

Alli: We are putting together a guide for ground level farms, roof level farms, shipping container farms, aquaponics. Will be available in late spring. We've also put together a food truck tool kit. In your experiences when you're coming up against a law that isn't helping you at all, this is where we do research to come up with ways to alleviate those barriers.

Jenny: We are creating a food hub of free lawyer services to low income farmers and food entrepreneurs. There will be attorneys who will be willing to work on their projects for free. Many farmers go without the legal services they need and that hurts them, or do they do and it's so expensive that it hurts other areas of their business. CLF acts as a clearing house to connect farmers and lawyers. Because of this we are focusing the project on transactional issues: taxes, contracts, estate issues, and others. One of the key elements of this is who we're helping, so we are being careful about we define who is eligible. The services are really focused on low income communities and we have an income cap. A "farmer" is an individual located in MA who produces agricultural products, make those products for the public, and have gross annual sales of over \$1000. Food entrepreneurs – gross annual sales over \$1000, processes food. We are also providing services to community groups who are providing surfaces to help food justice issues, no income cap. Income cap for farmers and food entrepreneurs is \$20,000.

We want to make sure that the lawyers who join this group have training specific to agriculture and their needs. We are going to pilot the program in MA for one year and then grow it to all of new England. The program is not limited to urban farming, farmers across the state are welcome to apply.