BY AMANDA KERR

Corporate & Foreign Ownership of Agricultural Lands in Wisconsin

Although Wisconsin's laws regarding corporate and foreign ownership of agricultural land have been rarely enforced, they remain on the books and could come into the spotlight at any time. This article explores key legal considerations for Wisconsin lawyers who advise clients regarding sales and acquisitions of Wisconsin farmland to corporations, limited liability companies, and other entities, many of which may be owned, directly or indirectly, by foreign individuals or entities.

Protecting Wisconsin's family farms and limiting foreign ownership of domestic farmland have become topics of increasing concern among the public and policy makers. However, these concerns are by no means new – Wisconsin's Corporate Farming Statute and Foreign Ownership Statute, which have existed for many decades, were introduced in response to similar concerns and remain relevant today.

The U.S. Department of Agriculture's most recent census of agriculture, from 2022, found that there were 55,765 family farms in Wisconsin (hereinafter the "state"), which accounted for 95% of the farms in the state.[1] While family farms continue to make up the majority of Wisconsin farmland, their numbers have been shrinking. From 2017 to 2022, the number of Wisconsin family farms decreased by 6,497.[2] During that same time, foreign ownership of agricultural land in the state increased, from 1.7% in 2017 to 2.6% in 2023.[3]

Wisconsin's shift in farmland ownership tracks national trends, though its percentage of foreign owned agricultural land is less than the national average. Foreign ownership of U.S. agricultural land has steadily increased by an average of 2.6 million acres annually from 2017 through 2023.[4] As of 2023, foreign persons held an interest in approximately 45 million acres of agricultural land in the U.S., representing 3.5% of all privately held agricultural land in the country.[5]

As a result of these trends, more Wisconsin lawyers are being asked to advise clients regarding sales and acquisitions of Wisconsin farmland to corporations, limited liability companies ("LLCs"), and other entities, many of which may be owned, directly or indirectly, by foreign individuals or entities. This article explores the key legal considerations under Wisconsin law that may arise in such transactions.

Corporate Farming Statute

The classic American farm conjures images of rustic red wooden barns and family-run operations passed down for generations. While modernization may have changed many aspects of the agricultural industry, Wisconsin family farms still retain cultural value and statutory protections. Wisconsin Statutes section 182.001, colloquially known as Wisconsin's "Corporate Farming Statute," was enacted in 1973 to protect the economic viability of family farms by restricting corporate ownership and operation of certain farming activities.

Prohibited Farming Operations. The Corporate Farming Statute prohibits corporations and trusts from owning land for the following "prohibited farming operations": production of dairy products, cattle, hogs, sheep, wheat, field corn, barley, oats, rye, hay, pasture, soybeans, millet, sorghum, and hemp.[6] Cranberry bogs, which are a notable special interest in Wisconsin, are not included in the list of prohibited farming operations.

Applicability. The Corporate Farming Statute generally applies to all corporations and trusts, unless the corporation or trust has 1) no more than 15 shareholders or beneficiaries, 2) no more than two classes of shares, and 3) exclusively natural persons (or estates) as shareholders or beneficiaries.[7]

An argument could be made that the Corporate Farming Statute does not apply to LLCs because, under a strict reading of the statute, the restrictions on corporate farming only apply to corporations and trusts. While Wisconsin courts have not ruled on this issue, analogous statutes have been interpreted broadly by Wisconsin courts. In *Lehndorff Geneva Inc. v. Warren*, the Wisconsin Supreme Court held that a statute applicable to "individuals, corporations and associations" was also applicable to limited partnerships because holding otherwise would "vitiate the statute."[8]

In interpreting the Corporate Farming Statute, a court could similarly find that excluding LLCs from the statute would vitiate the statute by allowing a corporation to create an LLC to hold farmland and avoid the restrictions of the Corporate Farming Statute. Furthermore, the Corporate Farming Statute predates the Wisconsin Uniform Limited Liability Company Law, and LLCs did not exist under Wisconsin law when the Corporate Farming Statute was adopted. These factors may weigh in favor of a broader reading of the Corporate Farming Statute. Ultimately, the Wisconsin Legislature should clarify the application of this statute to avoid the need for a court to interpret this ambiguity.

Statutory Exceptions. There are a number of statutory exceptions to the Corporate Farming Statute that allow corporations and trusts, which otherwise are subject to the restrictions of the law, to engage in prohibited farming operations.[9]

One notable exception is that "agricultural land acquired by a corporation or trust for expansion or other corporate or trust business purposes ... may be used for farming operations if leased to a person not prohibited from engaging in [prohibited farming operations]."[10] This exception appears to swallow the rule. Land acquired for "expansion or other corporate or trust business purposes" is broad enough to encompass almost any acquisition by a corporation or trust. Furthermore, so long as such land is leased to a person or entity not subject to the Corporate Farming Statute (for example, an individual or family farm), a corporation or trust can avoid the restrictions of the Corporate Farming Statute. Neither the Corporate Farming Statute nor Wisconsin courts have narrowed the scope of this exception.

Other exceptions to the Corporate Farming Statute include the following: 1) land acquired in satisfaction of a mortgage held by the corporation if the land is sold within five years after its acquisition at fair market value; 2) land acquired by a corporation to satisfy pollution control requirements; and 3) land used primarily for seed research, breeding, or production.[11] Lawyers should advise clients relying on any of the Corporate Farming Statute exceptions that to avoid facing penalties, the applicable exception must continue to apply, with special attention to such exceptions when there are changes to land use, lease term, or other qualifying conditions.

Penalties. If there is probable cause to believe that the Corporate Farming Statute has been violated, then a district attorney can bring an action to enjoin the operations and request a court order requiring the owner to divest itself of the land within a reasonable time.[12] Violators of the Corporate Farming Statute may be fined up to $1,000 for each violation; each day of a violation constitutes a separate offense.[13]

Constitutionality of Corporate Farming Statute

Wisconsin courts have provided little guidance on interpretation of the Corporate Farming Statute, and legislative history is similarly uninstructive. Wisconsin, however, is not the only state to impose restrictions on corporate farming.[14] The validity of similar corporate farming statutes in other jurisdictions has been challenged, with mixed results, on a variety of constitutional grounds.

- Nebraska's corporate farming constitutional provision was held to violate the dormant commerce clause because "State Officials failed to meet their burden of showing that Nebraska could not advance a legitimate local interest without discriminating against non-resident farm corporations and limited partnerships."[15]
- Missouri's corporate farming statute was held not to violate the Equal Protection Clause because the appellant failed to establish that the statute "creates an arbitrary classification or is not supported by a rational basis."[16] The court held that the statute is "rationally related to a legitimate state interest in that it prevents the aggregation of farmland in large corporations to the competitive exclusion of traditional farming entities."[17]
- North Dakota's corporate farming law was held not to violate the Due Process Clause because even though North Dakota can require owners to sell land that violates the corporate farming law, such owners are "afforded a fair opportunity to realize the value of the land, and that the sale, when required, is to be under conditions reasonably calculated to realize its value at the time of sale."[18]

While we can look to other jurisdictions that have upheld or overturned their own corporate farming laws for guidance, there is no precedent for how a Wisconsin court might rule if Wisconsin's Corporate Farming Statute is challenged.

Looking Forward. The Corporate Farming Statute remains a relatively undeveloped area of law in Wisconsin, with almost no legislative or judicial guidance on the interpretation and application of the statute. Given the lack of guidance and potential ambiguities in the statute, corporations and trusts might be unaware whether they are currently in violation of the Corporate Farming Statute unless they fall within one of the enumerated exceptions. While the constitutionality of the Corporate Farming Statute has not yet been challenged in Wisconsin, cases brought in other states challenging the constitutionality of similar statutes might foreshadow future challenges to Wisconsin's Corporate Farming Statute. Whether it comes from the Wisconsin Legislature or state courts, greater clarity is needed for lawyers to be able to best advise those corporations and trusts looking to own and operate farmland in Wisconsin.

Foreign Ownership Statute

Foreign ownership of land in the U.S., particularly farmland, has historically been a topic of concern, as reflected in the laws of various jurisdictions restricting foreign ownership of domestic land. Such laws "pre-date our Declaration of Independence; they became part of the fabric of state law as the colonies received the common law from England."[19] In 1984, the Wisconsin Legislature repealed and recreated Wisconsin Statutes section 710.02, the Foreign Ownership Statute, which places

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an acreage limitation on foreign-owned land in Wisconsin. In a 2014 Wisconsin attorney general opinion, J.B. Van Hollen described the Foreign Ownership Statute as an "instrument of agricultural protectionism, born in 'a period of agricultural discontent' … with resentment directed against both aliens and corporations."[20] While some policymakers warn that foreign investment in Wisconsin land poses a threat to local economies and national security,[21] other recent reports suggest that these claims are exaggerated.[22] Regardless of opinions about foreign ownership of land in Wisconsin, an understanding of the Foreign Ownership Statute, and the gaps and ambiguities that may exist within the statute, is crucial for lawyers advising foreign owners of Wisconsin land.

Acreage Limitation. The Foreign Ownership Statute prohibits foreign landowners from holding any interest, *directly or indirectly*, in more than 640 acres of land in Wisconsin (whether agricultural, commercial, or otherwise).[23] Under the statute, *foreign landowners* are listed as 1) non-resident aliens; 2) corporations not created under the laws of the United States; 3) corporations, LLCs, partnerships, or associations with more than 20% of their stock, securities or ownership held or owned by persons under 1) or 2); and 4) trusts with more than 20% of their assets held for the benefit of persons under 1) or 2).[24]

Statutory Exceptions. The acreage limitation set forth in the Foreign Ownership Statute does not, however, apply to foreign landowners who 1) acquire an interest in land by devise, inheritance or in collection of debts; 2) have a right to hold larger quantities of land secured by treaty; or 3) are railroad or pipeline corporations.[25]

The 2014 Wisconsin attorney general opinion provided the following insight into the legislative intent regarding these exceptions: "it is the legislature's intent that these liberalized provisions [of the Foreign Ownership Statute] and exceptions be strictly construed, so as to continue to limit alien ownership of land used for agricultural or forestry purposes to not more than 640 acres."[26]

However, it is unknown how a strict construction of the Foreign Ownership Statute would look in practice and when applied to fact-specific circumstances that might not have been contemplated by the drafters of the Foreign Ownership Statute. For example, there has been no interpretation or guidance on the use in the Foreign Ownership Statute of the terms "direct or indirect" interest, which creates issues of interpretation when dealing with foreign investment funds. The statute is similarly silent on the issue of control; for example, it is unclear how the statute would apply to an entity indirectly owned more than 20% by foreign entities or individuals but directly controlled by domestic persons.

The 2014 attorney general opinion does provide helpful context as to the application of the treaty exception described in 2) above.[27] The attorney general was asked whether members of the General Agreement on Trade in Services (GATS) are exempt from the acreage limitation of the Foreign Ownership Statute. GATS is an international agreement that requires its member nations, including the United States, to provide "national treatment" for certain enumerated services.[28] However, the use of land for agriculture or forestry is not a GATS-protected service that must be given national treatment by the United States. Therefore, the attorney general concluded that pursuant to the treaty exception, GATS Members may "acquire, own, or hold more than 640 acres of land for most service-related, non-agricultural, non-forestry uses enumerated in the GATS."[29] Lawyers advising foreign landowners should consider whether there are any applicable treaties that would secure the right to hold land in

excess of the acreage limitation pursuant to the treaty exception.

Permitted Purposes. Unless one of the above-described exceptions applies, foreign landowners can hold an interest, *directly or indirectly*, in more than 640 acres of Wisconsin land only if the excess land is used for certain statutorily permitted purposes such as oil, gas and mineral leases, and manufacturing and mercantile activities set forth in the standard industrial classification manual (each a "permitted purpose").[30] The 2014 attorney general opinion noted that the manufacturing and mercantile categories are "extremely broad, embracing almost every conceivable business activity" except activities related to agriculture and forestry (for example, operation of timber tracts, tree farms, and forest nurseries), which are expressly excluded.[31] Manufacturing activities include food, tobacco, textile, processing timber, furniture, petroleum refining, wood, paper, chemical, rubber, and leather products, electronic equipment, and transportation equipment, among others.[32] Mercantile activities include construction, transportation, communications, electric, gas, and sanitary services, wholesale trade, retail trade, finance, insurance and real estate, hotels, recreation, health, legal, educational, art, and social services, among others.[33]

Additionally, the Foreign Ownership Statute permits foreign landowners to hold land exceeding the acreage cap if the land is pending conversion and development to a permitted purpose and is leased to a non-foreign landowner for use in agriculture or forestry during that period of conversion and development.[34] As described further below, a foreign landowner relying on this exception must file with the state of Wisconsin a statement that includes a timetable and plan for conversion and development of the land to a permitted purpose. However, the statute provides no guidance on the scope or specificity of such conversion and development plans nor does it outline any specific requirements regarding the timeframe for such conversion and development.

Reporting Requirements. The Foreign Ownership Statute requires that any person filing a report required under the Agricultural Foreign Investment Disclosure Act (AFIDA) file a duplicate original of such report with the secretary of the Wisconsin Department of Agriculture, Trade and Consumer Protection.[35] The filing must include a statement that, if applicable, identifies the specific statutory exception allowing the foreign landowner to own an interest in more than 640 acres of land in Wisconsin.[36] If the exception being invoked is based on the use of the land for a permitted purpose, the filing must also include a timetable and plan for conversion and development of the land to that permitted purpose.[37] The penalty for failure to report is a $500-$5,000 fine.[38] Per the 2023 AFIDA Annual Report, from 1998 to 2024, two penalties were imposed on foreign landowners in Wisconsin because of late filing – a $1,888 fine in 2009 and a $576 fine in 2010.[39]

Enforcement – Forced Divestment. The Wisconsin attorney general is responsible for enforcing the Foreign Ownership Statute.[40] A foreign landowner that impermissibly acquires more than 640 acres of land in Wisconsin must divest of the excess land within four years after acquiring the interest.[41] Likewise, if the owner of more than 640 acres of Wisconsin land subsequently becomes a foreign landowner, the owner will be required to divest of the excess land within four years after acquiring the interest or becoming a foreign landowner, whichever occurs later.[42] If the foreign landowner fails to divest of the excess land within four years, the excess land must be forfeited to the state of Wisconsin.[43] Given the severity of this penalty, foreign landowners should be aware of and adhere to the acreage limitation. However, to date there have been no reported cases heard by Wisconsin courts regarding the enforcement of this penalty.

Constitutionality of the Foreign Ownership Statute

There is very limited precedent or guidance as to the interpretation and enforcement of the Foreign Ownership Statute. In *Lehndorff Geneva Inc. v. Warren*, the Wisconsin Supreme Court, in concluding that the Foreign Ownership Statute did not violate the Equal Protection Clause, considered whether the "classification is arbitrary and has no reasonable purpose or relationship to the facts or a justifiable and proper state policy."[44] The state's rationale for the Foreign Ownership Statute was that "absentee ownership of land can be potentially detrimental to the welfare of the community."[45] The court held that this rationale was not so "patently arbitrary" to justify the court rejecting it on Equal Protection Clause grounds.[46]

It is unknown whether now, nearly 50 years later, a Wisconsin court would still find the concern regarding absentee ownership to be a sufficient rationale to justify the statute. However, though factually distinct, a Nebraska court's reasoning in *Jones v. Gale* might be illustrative of potential challenges to the absentee-ownership rationale previously used to justify Wisconsin's Foreign Ownership Statute. In *Jones*, the state of Nebraska justified a restriction on land ownership based on concerns regarding absentee ownership and "negative effects on the social and economic culture of rural Nebraska."[47] The court rejected this justification because the restriction included an exception that allowed out-of-state corporations to own land in Nebraska so long as the family farm exception applied, which, per the court, directly contradicted Nebraska's rationale for the law.[48] The court also criticized the vagueness of Nebraska's rationale and stated that "[i]t appears in fact that the State Officials are attempting to obfuscate the issue by using such a vague definition of these 'negative effects.'"[49] While the

restriction in *Jones* was analyzed under the dormant commerce clause and is subject to a higher burden of proof by the state, similar criticisms might be raised in considering whether the rationale of Wisconsin's Foreign Ownership Statute is "patently arbitrary."

Pending Legislation. Over the past few years, there have been various legislative proposals to amend or repeal the Foreign Ownership Statute. On Aug. 18, 2025, Representative Clint Moses offered Assembly Substitute Amendment 1 to Assembly Bill 218. Among other things, the proposed legislation would reduce the acreage limit for foreign landowners from 640 acres to 50 acres, broaden the definition of foreign persons subject to the acreage limitation, and reduce the divesture period from four years to three years. Assembly Bill 218 is one of a handful of proposals to amend the Foreign Ownership Statute that the Wisconsin Legislature is considering during the 2025-26 session; the other proposed amendments are likewise seeking additional restrictions to foreign ownership of Wisconsin land.[50] Lawyers should closely track these proposals because many of the proposed amendments would, if enacted into law, have a significant effect on foreign landowners' ability to own land in Wisconsin.

The Future of the Corporate Farming Statute and Foreign Ownership Statute

Wisconsin's Corporate Farming Statute and Foreign Ownership Statute remain relevant today (and might be increasingly relevant) as debate surrounding the need for protection of family farms and the regulation of foreign land ownership continue to play out at the state and national levels. Both statutes, however, are marked by ambiguities and limited legislative and judicial guidance, creating uncertainty for current and potential landowners, and the lawyers who advise them. As similar statutes continue to be amended, strengthened, or challenged in other jurisdictions, the Corporate Farming Statute and the Foreign Ownership Statute might encounter similar scrutiny and reform. Given the evolving nature of these issues, knowledge and understanding of the Corporate Farming Statute and the Foreign Ownership Statute are crucial for Wisconsin lawyers who advise foreign or corporate clients acquiring land in Wisconsin. **WL**

ENDNOTES

[1]U.S. Dep't of Agric., Nat'l Agric. Statistics Serv., 2022 Census of Agriculture, U.S. Summary and State Data, vol. 1, Geographic Area Series, pt. 51 (Feb. 2024) [hereinafter 2022 Census].

[2]*Id.* at 646; U.S. Dep't of Agric., Nat'l Agric. Statistics Serv., 2017 Census of Agriculture, U.S. Summary and State Data, vol. 1, Geographic Area Series, pt. 51, at 699 (April 2019).

[3]2022 Census, *supra* note 1, at 21; U.S. Dep't of Agric. Farm Serv. Agency, *Foreign Holdings of U.S. Agricultural Land through December 31, 2017*, at 13, https://www.fsa.usda.gov/resources/economic-policy-analysis/afida/annual-reports/2017.

[4]U.S. Dep't of Agric. Farm Serv. Agency & Farm Prod. & Conservation Bus. Ctr., *Foreign Holdings of U.S. Agricultural Land through December 31, 2023*, at iv, https://www.fsa.usda.gov/resources/economic-policy-analysis/afida/annual-reports/foreign-holdings-us-agricultural-land-december-31-2023 [hereinafter *Foreign Holdings 2023*].

[5]*Id.*

[6]Wis. Stat. § 182.001(1), (3).

[7]Wis. Stat. § 182.001(1).

[8]*Lehndorff Geneva Inc. v. Warren*, 74 Wis. 2d 369, 372, 246 N.W.2d 815(1976).

[9]Wis. Stat. § 182.001(2).

[10]Wis. Stat. § 182.001(2)(e).

[11]Wis. Stat. § 182.001(2)(a), (c)3., (d).

[12]Wis. Stat. § 182.001(4).

[13]*Id.*

[14]*See, e.g.,* Kan. Stat. Ann. § 17-5904; Minn. Stat. Ann. § 500.24(1)(c); Mo. Ann. Stat. § 350.015.

[15]*Jones v. Gale*, 470 F.3d 1261 (8th Cir. 2006).

[16]*State ex rel. Webster v. Lehndorff Geneva Inc.,* 744 S.W.2d 801, 806 (Mo. 1988).

[17]*Id.*

[18]*Asbury Hosp. v. Cass Cnty. N.D.,* 326 U.S. 207, 212 (1945).

[19]*Lehndorff Geneva Inc.,* 74 Wis. 2d at 383.

[20]Wis. Op. Att'y Gen. 11-14, at 1, https://www.wisdoj.gov/Pages/AboutUs/attorney-general-opinions-archive.aspx (click on "2014 Attorney General Opinions"). [Editor's Note: In the opinion, J.B. Van Hollen is referring to the version created in 1887.]

[21]Alex Moe, *Baldwin Warns of Foreign Investors Buying U.S. Farmland*, WisBusiness News (Jan. 31, 2024), www.wisbusiness.com/2024/baldwin-warns-of-foreign-investors-buying-u-s-farmland.

[22]Trevor Hook, *Fears of China-Owned Farmland in Wisconsin and US are Exaggerated, New Analysis Suggests*, Wis. Pub. Radio (July 10, 2024), www.wpr.org/news/fears-china-owned-farmland-wisconsin-exaggerated-analysis-cornell.

[23]Wis. Stat. § 710.02(1).

[24]*Id.*

[25]Wis. Stat. § 710.02(2).

[26]Wis. Op. Att'y Gen. 11-14, *supra* note 20, at 2.

[27]*Id.* at 4.

[28]*Id.*

[29]*Id.*

[30]Wis. Stat. § 710.02(2)(e)-(g).

[31]Wis. Op. Att'y Gen. 11-14, *supra* note 20, at 3.

[32]*Division D of the Standard Industrial Classification Manual* (U.S. printing office 1972). Later editions are available at www.osha.gov/data/sic-manual.

[33]*Divisions C, E, F, G, H and I of the Standard Industrial Classification Manual* (U.S. printing office 1972). Later editions are available at www.osha.gov/data/sic-manual.

[34]Wis. Stat. § 710.02(3).

[35]Wis. Stat. § 710.02(4)(a). AFIDA is codified at 7 U.S.C. §§ 3501-3508.

[36]Wis. Stat. § 710.02(4)(a).

[37]*Id.*

[38]Wis. Stat. § 710.02(7).

[39]*Foreign Holdings 2023*, *supra* note 4, at 307, 308.

[40]Wis. Stat. § 710.02(8).

[41]Wis. Stat. § 710.02(5)(a)1.

[42]Wis. Stat. § 710.02(5)(a)2.

[43]Wis. Stat. § 710.02(6).

[44]*Lehndorff Geneva Inc.,* 74 Wis. 2d at 387.

[45]*Id.*

[46]*Id.* at 388.

[47]*Jones*, 470 F.3d 1261.

[48]*Id.*

[49]*Id.*

[50]*See, e.g.,* 2025 S.B. 219, 2025 S.B. 7, 2025 Assemb. B. 30. **WL**