Professional Training for Farm Succession Advisors in New England
The Falls Center
21 Front Street
Manchester, NH 03102

Wednesday May 3, 2017
7:00 AM – 8:30 AM New Lawyer Track

The Basics of Business Planning for the Farm Client
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Intro

The challenges of the beginning lawyer in any practice area, at law firms big and small can be daunting. For solo practitioners and other beginning private attorneys focused on farm business and farmland transfer issues, we provide here some tailored resources you can turn to.

The written materials from this CLE will be transformed into a desk reference for attorneys and non-attorney farm service providers working on farmland transfer issues. The desk reference will be posted to the "new" Farm Transfer Network of New England website. Benefit from the experience of seasoned attorneys who have included reference material in the following subjects:

- Legal Structure of the farm business
- Using an LLC to transfer the farm
- Business planning taxation issues
- Planning for a non-family transfer
- Estate Planning for a Farm Transfer
- Land Conservation and Farm Transfer
- Other land access tools

Day 1 will also include an opportunity to meet a mentor. We will have two breakout sessions designed to help you get to know experienced attorneys in the fields of farm business planning or farm estate planning.

Learning all you can about your clients' farms or working with a new food entrepreneur can be rewarding for both attorney and client. As you gain familiarity with the unique challenges confronting farmers, you can better serve your clients and build trust. The issues are intersectional and challenging, often touching upon issues of social justice, the sustainable use of natural resources, community, economics and politics. Farms, for example, face increasing

challenges in the areas of water quality, food safety, and immigration policy all of which will impact their ability to transfer the farm to the next generation.

Your practice may focus on a specific area of transactional law, with general legal training in other areas. However, in agriculture a broad familiarity with a legal topic without further examination can do yourself and your client a disservice, and should not be casually relied on. Agriculture is frequently an exempted area, treated as a 'special case' by legislatures with legal distinctions in labor laws, immigration laws, zoning laws, environmental laws and income and estate tax laws. The general rule may not apply to your farm client. General reference materials are provided for some of these areas, however do not assume that what worked for your retail business client will apply to your farmer client, and be willing to refer away clients to lawyers with subject matter expertise.

The Legal structure for a farm transfer and farm viability are inextricably linked. A careful reading of the farm's balance sheet, business plan and cash flow is essential to drafting an effective operating agreement. Is the farm generating or projecting enough income to bring in a new member? Is the farm building or losing equity? Is the debt load sustainable? Feasibility of the farm transfer should be evaluated before a word of the operating agreement is drafted.

In addition, transitioning farmers, many of whom carry the financial details of the operation around in their heads rather than on a balance sheet need to be able to communicate these details to new members. Developing a balance sheet, written business plan and cash flow is the first important step in farm transfer. In this respect, a farm business consultant is probably the most important member of your farm transfer team.

Finally, new solo farm and food practitioners face all the other challenges of starting a new business. A good strategy for success is to find a mentor who can help you when you get stuck. Working in a team that includes a farm business consultant, an accountant and perhaps a family communication specialist can help ground you in the facts, expose you to new clients and even in some cases - cover some of your fee.

A. General intake – farm client survey questionnaire (Sample)

A completed Business Planning Questionnaire informs both the initial client conference as well as the filing of the articles of organization, and drafting of an operating agreement or other entity formation documents. The questions in the sample questionnaire can be complex. The cover letter to the questionnaire should let clients know that if they don't know the answer to the question, the question should be left blank and the issue can be discussed at the first conference. The questions left blank provide a checklist to the attorney for issues that need further explanation and discussion.

I. The Farm Business

Name Selection

Conduct a business search with your Secretary of State's office to determine whether the farm has filed a "doing business as" registration or has otherwise reserved the farm's name. If no DBA has been filed conduct a search to determine if someone else has already claimed the name or a similar name.

Who is your client?

This question is possibly the most important issue to resolve and discuss with the client at the initial interview. Should each prospective member have independent counsel? Are you representing the senior generation? Are you representing the family? The business?

Rule 1.7 of the Rules of Professional Conduct in all six New England states generally prohibits joint representation that presents a concurrent conflict of interest. A concurrent conflict of interest exists where the representation of one client will be directly adverse to another client or where the lawyer's representation would be materially limited by the lawyer's responsibilities to the other client.

Notwithstanding the existence of a concurrent conflict, a lawyer, may undertake joint representation when:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
(2) the representation is not prohibited by law;
(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
(4) each affected client gives informed consent, confirmed in writing.

Even if the members want to consent to joint representation, the lawyer must still decide whether the conflict is "consentable." Where business partners or members appear to have more common objectives than discordant ones, multiple representations can save them time and expense. However, if serious conflicts are apparent at the outset, it is best for each party to have separate counsel.

One of the comments following the New Hampshire Rule 1.7 cites the "harsh reality test" and is instructive:

"(i)f a disinterested lawyer were to look back at the inception of this representation once something goes wrong, would that lawyer seriously question the wisdom of the first attorney's requesting the client's consent to this representation or question whether there had been full disclosure to the client prior to obtaining the consent. If this "harsh reality test" may not be readily satisfied by the inquiring attorney, the inquiring attorney and other members of the inquiring attorney's firm should decline representation . . . ."

New Hampshire Bar Association Ethics Committee Opinion 1988-89/24 (http://nhbar.org/pdfs/f088-89-24.pdf).

These issues should be discussed openly with the clients and the outcome of that discussion should be included in the engagement letter or fee agreement.

If "consentable" you should explain to clients that the duty of confidentiality will not apply to communications from an individual client. Anything one prospective member or partner tells you can be shared with the other members. They should also be made to understand that if a serious adverse conflict arises and cannot be resolved, you may be forced to withdraw and they will then need to go forward with independent counsel. You should also counsel them to have the draft operating agreement or other foundational documents reviewed by an independent attorney.

The Operating Agreement should include a provision stating that: Each person signing this Agreement understands that this Agreement contains legally binding provisions and has had the opportunity to consult with a lawyer and has consulted with a lawyer or has consciously decided not to consult a lawyer. (See Sample Operating Agreement at 3.7)

II. Nature of the Business

Duty of Loyalty

Entity authorizing legislation in most states will impose a duty of loyalty to the Company. (See Vermont Example below.) The duty of loyalty requires members or partners to refrain from competing with the company in the conduct of the company's business. It also requires that the members or partners bring business opportunities to the company rather than seizing the opportunity for personal gain. How you describe the business in both its articles of organization and in its foundational operating or other agreements will establish the extent of this duty. Clients should understand the nature of this duty and you should craft a description of the "company's business" that reflects their expectations about outside business activities and opportunities. (See Sample Operating Agreement at 2.1)

Vermont Example:

11 V.V.S.A § 4059(b). General standards of member's and manager's conduct

(b) A member's duty of loyalty to a member-managed limited liability company and its other members is limited to the following:
(1) to account to the company and to hold as trustee for it any property, profit, or benefit derived by the member in the conduct or winding up of the company's business or derived from a use by the member of the company's property, including the appropriation of the company's opportunity;
(2) to refrain from dealing with the company in the conduct or winding up of the company's business as or on behalf of a party having an interest adverse to the company; and
(3) to refrain from competing with the company in the conduct of the company's business before the dissolution of the company. (emphasis supplied.)

Taxation

Most farm entities choose to be taxed as a partnership where income or losses flows through to the individual members or partners. And most have a calendar year fiscal year. If the formation of the entity will result in a change of taxation from a sole proprietorship to partnership taxation

this question is an opportunity to explain the differences and to suggest that the operating or other foundational documents be reviewed by their accountant. They will also need to set up separate books for the new entity.

When members or partners reside outside the state of formation, some states will assert a right to tax that income and will require the business to withhold. Check your jurisdiction.

Tax provisions within an operating agreement typically recite verbatim IRS rules on partnership taxation and the maintenance of capital accounts. The operating agreement will also specify how the business is to be taxed. (See Sample Operating Agreement at 4.8 and 4.9)

III. Duration of the Business

The beginning date of the business and fiscal year are fundamental aspects of the articles of organization.

IV. Contributions of Members

The value of property contributed by each member forms the basis for their initial capital account. (See Sample Operating Agreement at 4.2) Clients will often provide a balance sheet indicating assets to be transferred to the new entity rather than complete the table in the questionnaire.

Most farms will take a dual legal structure. The farming operation will operate as a limited liability entity while the land will either remain in fee simple or be transferred to a separate entity. This dual structure encapsulates the financial risk of the enterprise in the farming operation and protects the land base from claims by unsecured creditors and other claimants by virtue of the limited liability shield. A current balance sheet and equipment list excluding the farm real estate should be incorporated into the operating agreement or other foundational document as well as a schedule indicating the value of each member's contributions.

The reference to cost basis provides an opportunity to discuss the need to track their cost basis in these assets once converted to units in an LLC or a capital account or other interest in an entity.

Farm real estate is most often "use property" of the entity meaning it is made available for the use of the business but is not property of the entity. Tenure of the real property is most often handled through a lease between the entity and the landowner.

Contribution of Services

All New England states except for Rhode Island allow the contribution of services and intangible property to an LLC as a capital contribution. Rhode Island's LLC statute provides that the contribution must be capital. R.I. Gen. Laws § 7-16-24

While the members or partners in these five New England states can treat a services contract as a capital contribution, the IRS will require the recognition of income to the service member equal to the capital interest. A contribution of tangible property to the LLC on the other hand is not a taxable transfer.

An outright gift within the annual exclusion amount or providing an income share without an initial capital interest may be a more tax friendly alternative to using the value of an employment contract as an initial stake in the business.

Future Capital Contributions

This question presents an opportunity to discuss with clients how capital share might change over time and how and whether that will affect management control and income distributions. A withdrawal of capital can have significant consequences for the viability of the business. Conditions for withdrawal should be discussed and included in the operating agreement. (See Sample Operating Agreement at 4.7)

VI. Distribution of Income / Losses

The operating agreement will provide for the allocation of income, losses, deductions and credits. Income can be allocated on the basis of capital share, work contribution or other factors provided those factors fall within the "substantial economic effect" test of Treasury Reg. § 1.704-1(b)(2). An income allocation not based on capital share must be "consistent with the underlying economic arrangement of the partners. This means that in the event there is an economic benefit or economic burden that corresponds to an allocation, the partner to whom the allocation is made must receive such economic benefit or bear such economic burden." A member or partner with a small capital stake but who provides a majority of the day to day labor and management (economic burden) could receive a larger income share disproportional to his capital share (economic benefit.) (See Sample Operating Agreement at 5.1 and 5.2)

VII. Account and Records

The trend in state LLC statutes, particularly with manager managed LLCs is to hold requests for financial information from a member to a "just and reasonable" standard. See 11 V.S.A. §4058. The operating agreement should provide clarity with respect to the members' intent. (See Sample Operating Agreement at 3.1 and 3.3)

VIII. Management of the Business

In an LLC context, the business can be member-managed or manager-managed. The later gives day to day management authority to a manager or managers who can act without having to seek authorization from other members. Larger questions as specified in the operating agreement are subject to a vote of all members. If member managed, any member can act on behalf of the company in the day to day management of the business and larger questions are put to a vote. Units of the LLC can be voting or nonvoting. There are many options within the LLC structure to gradually transfer management control and ownership to the next generation. (See Sample Operating Agreement at 6.1 and 6.2)

The Operating Agreement will also specify voting rights. An LLC can issue voting and non-voting shares to its members. A non-voting share will have economic rights associated with income allocations and distributions and liquidation rights but will not have a right to vote on management matters. Decisions can be taken by majority vote, a super majority vote or in some cases by consensus. (See Sample Operating Agreement at 6.2 and 6.5)

IX. Dissolution of the Business / Buy Sell Agreement

A buy-sell agreement is a means of planning for the death, disability or withdrawal of a member. A buy-sell agreement can be used to protect the heirs of the partners and to ensure a smooth transfer of a deceased or disabled partner's share in the business to the remaining partners. A buy-sell agreement provides for stable continuity of the business without a threat of termination upon the death, disability, or withdrawal of a partner.

A buy-sell can be mandatory or voluntary. In the case of a gifted capital interest, the buy sell may want to impose a length of service requirement. It can be a separate agreement or be embedded in the operating agreement.

The buy-sell should be structured to protect the viability of the business by setting out payment term and interest rate that the business can withstand. A means of valuation must also be included. (See Sample Operating Agreement at 12.1 and 12.2)

B. Competence

Before you can undertake representation, you must determine whether you are able to provide component representation. Vermont, Connecticut, Maine, Massachusetts and Rhode Island all follow Rule 1.1 of the Model Rules of Professional Responsibility.

Rule 1.1. COMPETENCE

CLIENT-LAWYER RELATIONSHIP

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. —Amended June 17, 2009, eff. Sept. 1, 2009.

Comment

Legal Knowledge and Skill

[1] In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, the preparation and study the lawyer is able to give the matter and whether it is feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question. In many instances, the required proficiency is that of a general practitioner. Expertise in a particular field of law may be required in some circumstances.

[4] A lawyer may accept representation where the requisite level of competence can be achieved by reasonable preparation. This applies as well to a lawyer who is appointed as counsel for an unrepresented person. See also Rule 6.2.

Thoroughness and Preparation

[5] Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more extensive treatment than matters of lesser complexity and consequence. An agreement between the lawyer and the client regarding the scope of the representation may limit the matters for which the lawyer is responsible. See Rule 1.2(c).

Maintaining Competence

[6] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.

New Hampshire has rejected the Model Rule imposes a different and more stringent standard:

Rule 1.1. Competence

(a) A lawyer shall provide competent representation to a client.

(b) Legal competence requires at a minimum:

(1) specific knowledge about the fields of law in which the lawyer practices;

(2) performance of the techniques of practice with skill;

(3) identification of areas beyond the lawyer's competence and bringing those areas to the client's attention;

(4) proper preparation; and

(5) attention to details and schedules necessary to assure that the matter undertaken is completed with no avoidable harm to the client's interest.

(c) In the performance of client service, a lawyer shall at a minimum:

(1) gather sufficient facts regarding the client's problem from the client, and from other relevant sources;

(2) formulate the material issues raised, determine applicable law and identify alternative legal responses;

(3) develop a strategy, in consultation with the client, for solving the legal problems of the client; and

(4) undertake actions on the client's behalf in a timely and effective manner including, where appropriate, associating with another lawyer who possesses the skill and knowledge required to assure competent representation.

Ethics Committee Comment

The New Hampshire Rule continues the prior New Hampshire Rule, expanding on the Model Rule to serve both as a guide and objective standard. The Model Rule standards of legal

knowledge, skill, thoroughness, and preparation reasonably necessary are rejected as being too general.

ABA comment [8] (formerly Comment [6]) requires that a lawyer should keep abreast of . . . the benefits and risks associated with relevant technology." This broad requirement may be read to assume more time and resources than will typically be available to many lawyers. Realistically, a lawyer should keep reasonably abreast of readily determinable benefits and risks associated with applications of technology used by the lawyer, and benefits and risks of technology lawyers similarly situated are using.

D. Engagement letters, fee agreements, and closing letters

I. Engagement Letters & Fee Agreements

See attached sample engagement letter

You may choose to have separate documents for the engagement letter and fee agreement, or to use the engagement letter as an opportunity to articulate the fee agreement. This should not be the first conversation about money between attorney and prospective client. The more explicit and transparent you are about costs, deliverables, and financial expectations, the fewer problems that are likely to arise. Underlying many soured attorney-client relationships are disagreements about fees. You and your client may wish to negotiate either a project-based representation or a retainer based on an hourly rate.

Important points to explicitly identify:

1. This engagement letter marks the beginning of the attorney-client relationship
2. Party or parties represented
3. Scope of the representation in as much detail as possible
    a. “The representation is limited to the above. Any expansion to the scope of these services must be agreed upon by both parties in writing.”
4. Timing of consultations and deliverables
5. Fees: project based estimate or hourly with timing estimates

    a. You may wish to include a clause stating that if the representation reaches a certain amount you will contact the client before proceeding.

6. Timing of payment (i.e. within x days of issuance of invoice)
7. Signature line for both attorney and client
    a. "I have read this letter and consent to it. Furthermore, I grant and give my informed consent to the representation as described above."
8. Affirmative written consent in as much detail as possible.

Invoices set up what work the attorney performed, how long it took, and the rate. If I go over the fee agreement estimate, I notify them immediately. How much is inexperience and how much you need to charge for. Being respectful of your own time and value as well as setting up appropriate expectations with the client. Fees should be reasonable, see Model Rules 1.5 dealing with fees.

> RULE 1.5: FEES
> (a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:
>
> (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
> (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
> (3) the fee customarily charged in the locality for similar legal services;
> (4) the amount involved and the results obtained;
> (5) the time limitations imposed by the client or by the circumstances;
> (6) the nature and length of the professional relationship with the client;
> (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
> (8) whether the fee is fixed or contingent.
>
> (b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall be in a writing signed by the client and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal; litigation and other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(d) A lawyer shall not enter into an arrangement for, charge, or collect:

(1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof; or

(2) a contingent fee for representing a defendant in a criminal case.

(e) A division of a fee between lawyers who are not in the same firm may be made only if:

(1) the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation;

(2) the client agrees to the arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing; and

(3) the total fee is reasonable.

ABA Model Rules of Professional Conduct Rule 1.5: Fees, current as of April 19, 2017

New Hampshire: "The language used in Rule 1.5(a) is substantially the same as proposed ABA Model Rule 1.5(a) and changes the prior rule in two respects. First, it replaces the prior rule's standard prohibiting a "clearly excessive fees" with the ABA Model Rule standard of an "unreasonable fee." This change reflects the fact that a "reasonableness" standard defines a lawyer's obligation to the client with respect to other aspects of their relationship governed by the Rules of Professional Conduct…

The second change to Rule 1.5(a) is that it has been revised to make explicit that a lawyer may not charge an unreasonable amount for expenses for which the client is responsible. This change in the text of the rule, which is consistent with the opinions of state ethics committees, is not intended to change the substance of the prior rule. *See* ABA Formal Opinion 93-379.

The New Hampshire rule differs markedly from the ABA Model Rule because it allows so-called "naked" referral fees. The ABA Model Rule allows a division of a fee between lawyers not in the same law firm only where each lawyer actively participates in a matter or assumes joint responsibility and risk for the representation of the client. The New Hampshire rule changes this requirement and allows a division of fee with a forwarding lawyer, regardless of the work performed or responsibility assumed, provided that the client consents in writing to the division of fees and the total fee is not increased because of the fee division and is reasonable. This change from the ABA Model Rule and from the previous New Hampshire rule is intended to facilitate the association of alternate counsel in order to best serve the client and is often but not exclusively used when the division is between a referring lawyer and a trial lawyer."
https://www.courts.state.nh.us/rules/pcon/pcon-1_5.htm

Maine
http://mebaroverseers.org/regulation/bar_rules.html?id=87829

Vermont
Similar, with significant changes to section (d)(1); and (e)(1-3) governing division of fees between lawyers of different firms changes to:

> (1) the division is in proportion to the services performed by each lawyer or, by written agreement with the client, each lawyer assumes joint responsibility for the representation;
> (2) the client is advised of and does not object to the participation of all the lawyers involved; and
> (3) the total fee is reasonable.

Rhode Island
Same except (b) adds "Where the fee is not fixed or contingent, billings regarding the fees, costs, and expenses shall be provided to the client on a quarterly basis or as otherwise provided in the agreement."
https://www.courts.ri.gov/PublicResources/disciplinaryboard/PDF/Article5.pdf

Massachusetts
Substantial changes to all sections except (a).
http://www.mass.gov/courts/case-legal-res/rules-of-court/sjc/sjc307-rule1-5.html

Connecticut
Changes to:

(b) making a written fee agreement mandatory, written communication must occur before billing, and creates exceptions for public defenders and when lawyer will be paid by a court or state agency.
(e) (1-3) changed to:
(1) The client is advised in writing of the compensation sharing agreement and of the participation of all the lawyers involved, and does not object; and
(2) The total fee is reasonable.

https://www.law.cornell.edu/ethics/ct/code/CT_CODE.HTM

II. Closing Letters

The closing letter is an opportunity to state or restate the scope of the representation, to maintain a cordial relationship which will leave the client happy and thinking of you the next time legal matters arise, and to clarify the ongoing responsibilities and obligations of the parties, such as maintenance of documents or papers in connection with the representation. However, the single most important function of this document is to clarify in no uncertain terms that the representation has concluded.

Although it is tempting and may seem polite to imply an ongoing relationship with language like "call me if you have any questions" or "contact me at your convenience", the now former client must be crystal clear that they are no longer represented by you. If they hold a reasonable belief that they continue to be represented by you, you may create ongoing obligations due to an unintended ongoing attorney-client relationship. Even if unintended, the attorney-client relationships can continue for years without any communication.[1] Courts have found ongoing relationships when communications resembling a closing letter contained the language "do not hesitate to contact me if you have any questions regarding the enclosed."[2] Be polite but firm and unambiguous. "This concludes our representation" and "I am closing my file" should sufficiently dampen expectations of ongoing monitoring by you or your firm, and create the essential closure.

Sample language: On behalf of ___, I am glad to have represented you in this matter. This concludes our representation. I am closing my file and will retain these records for ___ years. After [5] years, these may be confidentially destroyed.

Maintaining signed copies, correspondence, client conference notes. At least a copy of the original executed document. Putting a copy of the OA in the LLC Notebook, minutes, leases, articles of organization from the state.

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[1] Jones v. Rabanco, Ltd., 2006 WL 2237708 (W.D.Wash. 2006)
[2] SWS Financial Fund A v. Salomon Bros., Inc., 790 F.Supp. 1392, 1398 (N.D.Ill.1992).

Note that there may be statutory requirements for retaining records, depending on the type of representation. Estate planning documents, real estate documents and financial documents may require ongoing record maintenance. These should typically be stored in a fireproof file cabinet.[3] You may also agree with the client to return all records to them. Having a system in place prevents the common predicament of having to store large volumes of physical or digital data which can be a target for data breaches.

E. Professional Liability Insurance

Professional liability is essential to protect both you and your clients. Insurance premiums vary based on area of practice, with higher risk areas (as determined by the underwriters) resulting in higher monthly costs. Insurance for a real estate practice, for example, can be quite expensive in relation to a solely transactional or estate planning practice. You must decide whether to confine your practice to an area with lower rates weighing your clients' needs accordingly. Each provider will assess the risk based on your intake questionnaire. Risk management techniques like a conflict checking system and using the client engagement letters discussed above should result in a lower premium assessment. They will also expect you to regularly earn ethics credits from an accredited CLE provider.

Some insurance providers offer discounts specific to beginning lawyer establishing a solo practice, and some Bar Associations' member benefits include insurance discounts. While waiting to enroll until you have landed a client may sound like an appealing option from a cost perspective, the enrollment process can take weeks, and a farming client may have a need arise on a tight timeline. Be sure your practice area is covered by the policy you select, insurers may choose to exempt certain areas from coverage, examples include the RICO racketeering act and securities regulation.

The average malpractice insurance premium for solo attorneys is $2,800 per year.
Some New England agricultural lawyers without a real estate practice pay $2,200.

The ABA has a Standing Committee on Lawyers' Professional Liability
http://www.americanbar.org/groups/lawyers_professional_liability.html
They provide the following site with advice on selecting an insurance partner.
http://www.americanbar.org/groups/lawyers_professional_liability/resources/materials_for_purchasers_of_professional_liability_insurance.html
The "First Flight" program at ALPS provides a significant discount for beginning solo attorneys.

Insurance Providers:

[3] Model Ethical Rules 1.15 & 1.16 (adopted in all New England States) file maintenance requirements

Insurance for Lawyers
www.iflforlawyers.com/
USI (offers ABA member discounts)
www.usi.com/affinity-programs/law-firms-associations/
ALPS First Flight
http://www.alpsnet.com/products/first-flight/
Q and A

Appendix of Recommended Resources

New England Gatherings
Land for Good, National Land Tenure Conference
Northeast Organic Farming Association (NOFA)
A regional winter and summer conference each year
Each state's winter and summer
NOFA VT Winter and Summer
Common Ground September gathering in Unity, ME
Harvard Food Law & Policy Clinic Food Justice Conference each spring
Slow Money gatherings
State Extension trainings
American Agricultural Lawyers Association Annual Meeting
NESAWG It Takes A Region Conference
National Farm Viability Conference

National gatherings and trainings
USDA webinars
North American Food Systems Network Good Food Talk Webinar series

Broad overview reference materials for other areas of agricultural law
The National Agricultural Law Center,
Particularly their Congressional Research Service Reports indexed by subject
http://nationalaglawcenter.org/crs/
Farmers' Guide to Labor law exemptions
Farm-specific Immigration law
Farmer's Guide to Environmental Law
IRS 2016 Farmer's Tax Guide
UVM Tax School
National Sustainable Agriculture Coalition Resources

Grassroots Guide to the Farm Bill
FSMA Guide
Conservation Law Foundation
Farm & Food Law Guide Maine
Harvard Food Law & Policy Clinic
Vermont Law School Center for Agriculture & Food Systems
ABA Electronic Library (free with membership)

Text: "Food, Farming & Sustainability" by Susan Schneider
"Food Labeling" by Neal Fortin
"Food, Agriculture and Environmental Law" by Angelo, Czarnezki and Eubanks

Listservs & Newsletters
Comfood (Tufts)
Comfood Jobs
National Young Farmers Coalition
National Sustainable Agriculture Coalition
Northeast Organic Farming Association
New England Farmers Union
Land for Good