

## **Alien Farmers in Minnesota 1851-2004**

Minnesota prohibits most ownership of farmland by individuals who are not U.S. citizens. The legislature has wrestled with this issue numerous times; in its 153-year history, the legislature has made several dramatic reversals of previous land ownership policies. This information brief provides background information on Minnesota's laws limiting farmland ownership by aliens and identifies the timing and nature of the more significant statutory changes that are responsible for creating today's alien farmer law.

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### **Background: Frequent Changes Have Been Made in Minnesota's Policy on Alien Farmers**

Few areas of real property law or agricultural policy have been as controversial as landownership, and especially farmland ownership, by people who are not U.S. citizens ("aliens"). Restrictions on the ability of aliens to hold and own land originated in the common law of England and migrated to the New World with the first English settlers. After the United States gained independence, many states adopted modified versions of the common law prohibitions on alien landownership. Early decisions by the U.S. Supreme Court held that regulation of landownership was primarily vested in the states. Not surprisingly, state laws governing landownership did not develop in a uniform fashion. As the nation expanded westward, various states took widely divergent approaches toward encouraging or restricting landownership by aliens.

The Minnesota Legislature has wrestled with this issue on more than a hundred occasions during the past 153 years, changing alien farm law more than 35 times since 1851. Several of the changes represented dramatic reversals of previous policy. Part I describes the current

Minnesota law as of November 1, 2004, including law changes made by the legislature in 2003 and 2004. Part II details many of these changes in policy.

## **Part I: Current Minnesota Policy on Alien Farmers**

[Minnesota Statutes, sections 500.221](#) and [500.222](#), define terms and establish the basic policy, plus specific exceptions, for alien ownership or use of Minnesota farmland. The basics are summarized below.

- ▶ As of 2004, Minnesota generally imposes alien landownership restrictions only on “agricultural land.” Agricultural land is defined as land that has not been zoned for nonagricultural uses by a local governmental unit.
- ▶ The rules do not vary by tenure; they apply equally to ownership or rental of farmland. An alien desiring to rent or lease agricultural land is treated the same as an alien seeking to purchase or own agricultural land.
- ▶ Restrictions under the law do not apply to an individual who is classified by the U.S. government as a “permanent resident alien.” The statutes define a permanent resident alien as someone who has been lawfully admitted to the United States for permanent residence or who holds a nonimmigrant treaty investment visa.
- ▶ An individual with a nonimmigrant treaty investment visa may engage in dairy farming (and only dairy farming) in the state and must live at his or her principal dwelling place anywhere in Minnesota for ten months out of every year. The dairy farmer is limited to an interest in a maximum of 1,500 acres. Further, the person must actively pursue U.S. citizenship within three years after acquiring a rental, lease, or purchase interest in Minnesota agricultural land.
- ▶ Every permanent resident alien and investment visa holder must report to the Commissioner of Agriculture within 30 days of acquiring an interest in agricultural land in the state. Additional reports must be filed in January of each year. The Department of Agriculture makes forms available for filing these reports.
- ▶ A corporation or other business entity with over 20 percent foreign ownership cannot own or operate a farm in the state, even if it is the type of entity that otherwise could do so under Minnesota’s corporate farm law. [Minn. Stat. § 500.24](#). The statute provides a few narrow exceptions to the prohibition on foreign corporations and businesses holding interests in agricultural land. These include the following:
  - land acquired through the enforcement of a debt, but the land must be divested within three years
  - land held by an individual, corporation, or business under the terms of a treaty between the United States and a foreign country
  - land used for transportation purposes by a common carrier
  - land used for research or experimental purposes that was grandfathered when alien landownership restrictions were re-imposed in 1977
  - tracts of land less than 40 acres that are used for pumping equipment by a foreign pipeline company

- land held by an E-2 investment visa holder on August 1, 2003, but the person must become eligible under other provisions to continue holding the interest in land beyond August 1, 2008
- ▶ Current law specifies detailed procedures the Commissioner of Agriculture can use to enforce landownership and use restrictions on aliens and foreign corporations and businesses.

A recent law change provides that a landowner holding a grandfathered right to retain interest in a parcel of agricultural land can participate in a voluntary land exchange with a school district, or a city, town, or county government, and the land newly acquired by the landowner from the governmental unit will assume the same grandfathered status as the original parcel of land.

## **Part II: Chronology of Minnesota Laws; Alien Farmers**

**1851**      *Revised Statutes of the Territory of Minnesota* is adopted, borrowing heavily on the *1849 Revised Statutes of the State of Wisconsin*. This document contains an unequivocal policy statement at chapter 49, section 35, allowing aliens unrestricted rights to own land:

Any alien may acquire and hold lands, or any right thereto or interest therein, by purchase, devise, or descent; and he may convey, mortgage, and devise the same, and if he shall die intestate, the same shall descent to his heirs; and in all cases such lands shall be held, conveyed, mortgaged, or devised, or shall descent in like manner, and with like effect, as if such alien were a native citizen of this territory or of the United States.

**1858**      Minnesota is granted statehood.

**1859**      Virtually identical language concerning alien landownership is carried forward from Minnesota territorial statutes to Minnesota law as expressed in the *Public Statutes of the State of Minnesota, 1849-1858*.

**1866**      Editors of the *General Statutes of the State of Minnesota* for 1866 simplify the language of the alien landownership law at chapter 75, section 22, to read:

Aliens may take, hold, transmit and convey real estate; and no title to real estate shall be invalid on account of the alienage of any former owner.

**1887**      The legislature reverses the state's policy on landownership by aliens. This is reflected in the title of chapter 204 of *General Laws of the State of Minnesota*: "An act to restrict the ownership of real estate in the State of Minnesota to American citizens and those who have lawfully declared their intentions to become such and so forth, and to limit the quantity of land which corporations may acquire, hold, or

own.”<sup>1</sup>

- ▶ This law prohibits a person who is not a citizen, or a person who “has not lawfully declared their intentions to become” a citizen, to acquire, hold, or own real estate acquired after December 31, 1888.
- ▶ A corporation or association with more than 20 percent of its ownership held by persons who are not U.S. citizens is prohibited from acquiring title to any real estate after December 31, 1888, unless the right to hold land is protected by a treaty between the U.S. government and a foreign country.
- ▶ Aliens or alien corporations who acquire the land by inheritance, by foreclosing on a mortgage, or by the collection of a debt are exempted from the above prohibitions.
- ▶ Also exempted are corporations that own land necessary to operate a railway, canal, or turnpike. (The language of chapter 204 is silent about whether this exemption applies to foreign and domestic corporations or only to domestic corporations.)
- ▶ All property acquired, held, or owned in violation of the new law is forfeited to the state.

**1889** The legislature passes chapter 113, which amends the 1887 law to soften some of its harshest provisions and to reduce the effects of contract or title impairment brought about by an action to collect a debt, enforce a lien, or resolve other security interests. The amendments also create an additional exemption for “actual settlers upon farms of not more than one hundred and sixty (160) acres of land.” Also, a new provision explicitly exempts aliens and foreign corporations from the prohibition on “...holding or acquiring lots or parcels of land not exceeding six lots of fifty feet frontage by three hundred feet in depth each ... within and forming a part of the platted portion of an incorporated city....”

In order to be valid and binding, actions for forfeiture of land to the state must be commenced within three years after real estate has been acquired by an alien prohibited from owning land. Further, new language settles any issue regarding the title of a real property because a former owner was a prohibited alien.

**1897** Chapter 112 of General Laws 1897 adds a further exception to the enforcement section reading: “...none of the provisions of this act shall apply to any person or corporation actually engaged in the business of selling land to actual settlers, provided they shall dispose of all such lands within ten (10) years from the time of acquiring title thereto, or the same shall be forfeited and the forfeiture enforced as

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<sup>1</sup> This was a period of economic unrest and distress, a decade after the founding of the Patrons of Husbandry (Grange), and a time when the overwhelming economic dominance by the railroad corporations and Standard Oil was feared by virtually all farmers and others in production-level enterprises.

Laws 1887, chapter 204, may also have been a Minnesota legislative response to the federal “Territorial Land Act of 1887,” which Congress passed out of concern over major investments by Europeans in large tracts of land in the newly opened territories.

provided in this section.”

- 1905** The legislature contracts to have the text of Minnesota statutes and laws edited, compiled, and adopted as Revised Laws Minnesota 1905. Alien ownership restrictions that were previously located at sections 5875 to 5879 are codified in chapter 59 as sections 3235 to 3239. During codification the language is reorganized and simplified, but the meaning remains essentially the same as that passed in 1887 and amended in 1889 and 1897.
- 1907** Chapter 439 of General Laws of Minnesota for 1907 amends the 1905 codification to provide that an alien or corporation selling land to “actual settlers” must dispose of all property still held at the time of enactment of the amendment (1907) by 1917.
- 1911** Laws of Minnesota for 1911, chapter 130, creates a new provision allowing persons or corporations “actually engaged in manufacturing in the State of Minnesota” to hold land reasonably necessary for carrying on its business. However, within ten years after any part of the land ceases to be used for purposes of its business, the corporation must dispose of the excess land.
- 1927** *Mason’s Minnesota Statutes, 1927*, a major restructuring and recodification of Minnesota law, moves the sections relating to alien landownership to chapter 59, sections 8076 to 8080. The 1927 recodification does not make significant policy changes.
- 1939** The newly appointed “Revisor of Statutes” is instructed to codify Minnesota laws passed since 1905 and publish them as Minnesota Statutes. Over a period of several years, the Revisor’s Office organizes statutes and laws with a new numbering system. Some of the drafts of statutes were printed but never officially enacted. Nonetheless, the language and organizational structure of the statutes is modernized by 1941, again with a minimum of substantive policy changes. Restrictions on landownership by aliens and non-American corporations are rewritten and become section 500.22.
- 1945** The 1941 statute, section 500.22, is rewritten again to correct technical errors and to remove the exception for persons or businesses selling lands to actual settlers. Also, the 5,000-acre limitation on corporations owning land now applies only to corporations engaged in farming.
- 1947** An amendment adds railroad corporations to the list of persons and businesses exempted from the prohibition on owning farmland.
- 1953** An amendment adds “common carriers” to the list of persons and businesses exempted from the prohibition on owning farmland.
- 1959** Amendments to the alien ownership clause validate the ownership of lands received by an alien in the dissolution of the assets of a corporation. Of much greater significance, section 500.22, subdivision 2, is repealed. This subdivision had prohibited ownership of Minnesota land by a corporation with greater than 20

percent foreign stockholders. The effect was to apply a 90,000-square-foot ownership limit (from subdivision 1, which was not repealed) on all aliens and all corporations not chartered in the United States. Domestic corporations engaged in farming, on the other hand, were capped at 5,000 acres of Minnesota land.

**1971** A major new section of statute (500.23) requires that foreign (alien) and domestic corporations that own or lease agricultural land and use it for growing crops or keeping poultry or livestock must annually report their status and holdings to the Secretary of State.

**1973** Subdivisions 3, 4, and 5 of Minnesota Statutes, section 500.22 (which had dealt with both alien ownership and corporate ownership in the same section) are repealed and the restrictions on corporate ownership are rewritten as a new section 500.24. Section 500.23 (which had been created just two years before) is also repealed, and the policy of requiring annual reports from corporations owning or leasing farmland is incorporated into the new section 500.24. Annual reports are to be made to the Commissioner of Agriculture rather than the Secretary of State. At this time the remaining restriction on aliens is contained in section 500.22, subdivision 1, which reads:

Except as hereinafter provided, no person, unless he be a citizen of the United States or has declared his intention to become a citizen, and no corporation, unless created by or under the laws of the United States or some state thereof, shall hereafter acquire lands, or any interest therein, exceeding 90,000 square feet, except such as have been or may be acquired by devise or inheritance, or by a distribution to stockholders of any assets of a corporation upon dissolution of the corporation or otherwise, and such as may be held as security for indebtedness. The provisions of this section shall not apply to actual settlers upon farms of not more than 160 acres, or to citizens or subjects of a foreign country whose rights to hold land are secured by treaty.<sup>2</sup>

**1977** Existing restrictions on Minnesota landownership by aliens and non-American corporations (consisting of section 500.22, subdivision 1) are repealed and a new section is created to deal with alien landownership policy.

- ▶ Much of the restrictive language repealed in 1959 and 1973 is reenacted as section 500.221. Once again, non-American corporations are defined as those with less than 80 percent of each class of stock held by citizens or permanent resident aliens of the United States.
- ▶ One significant variation from the pre-1973 law is that the newly re-enacted restrictions apply only to “agricultural land,” which is defined to exclude land zoned for nonagricultural purposes.
- ▶ Existing alien landowners (individual and corporate) are grandfathered in. A few exemptions remain (such as for aliens or non-American corporations using

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<sup>2</sup> Note that the restriction on alien ownership is applicable to all Minnesota land, not just farmland.

land for transportation or common carrier purposes).

- ▶ Any interest in agricultural land acquired by an alien person or a non-American corporation through enforcement of a debt must be disposed of within three years after the interest is acquired.
- ▶ Alien owners of agricultural land (individuals, corporations, and those operating under any other business structure) are required to submit a detailed initial report (within 90 days after enactment of the law), and other reports annually, to the Commissioner of Agriculture. Information in the reports is to be made available to the public.

**1978** Ownership restrictions for domestic corporations are changed to exclude the production of poultry or poultry products from the definition of farming, thus allowing vertically integrated corporations in the poultry business to own or lease Minnesota farmland. However, the definition of land restricted for use by aliens and non-American corporations remains very broad. The definition reads “land capable of use in the production of agricultural crops, livestock or livestock products, poultry or poultry products, milk or dairy products, or fruit and other horticultural products....”

**1981** Alien ownership restrictions in section 500.221 are tightened.

- ▶ A permanent resident alien owner must actually reside within the United States for at least six months out of each 12-month period.
- ▶ New provisions require divestiture of an interest in agricultural land within one year after an individual or corporation fails to qualify as an alien authorized to own farmland. In certain circumstances the Commissioner of Agriculture can extend the time period allowed for divestiture.
- ▶ The Commissioner of Agriculture may investigate (with subpoena power) any information leading the commissioner to believe that a violation of alien ownership may exist.
- ▶ Corporate ownership restrictions are applied to pension or investment funds and family trusts. Some existing holdings by family trusts are grandfathered in.

**1983** An amendment to the alien corporate ownership provisions allows a non-American corporate pipeline company to own 40-acre parcels of land as sites for pumping stations.

A separate amendment increases the fee for filing the required annual report from \$35 to \$50 and adds an additional fee of \$10 for each additional quarter section of land reported.

**1989** Aliens or non-American corporations involved in vegetable processing are allowed to own agricultural land if the land is necessary to meet pollution control laws or rules.

**1996** A new exemption from alien landownership restrictions allows a corporation

organized under the laws of Minnesota to hold an interest in land for production of timber and forestry products. Pending development of the land for the production of timber and forestry products, the land must not be used for farming except under lease to an entity authorized to farm in the state.

- 2002** A new section of law allows for the transfer of real estate between an alien landowner (that owner being grandfathered in because the land was acquired prior to June 1, 1981) and a local unit of government in such a way that the alien owner of the land being transferred is granted the same ownership rights to hold an interest in the newly acquired land.
- 2003** An amendment provides that an alien who held an interest in agricultural land as of May 28, 2003, and had a nonimmigrant treaty investment visa, would have five years to dispose of the property or become a U.S. citizen or a permanent resident alien.
- 2004** An amendment to the definition of “permanent resident alien” opens eligibility for certain aliens to farm if they hold a nonimmigrant treaty investment visa. These visa holders may engage only in dairy farming, only on no more than 1,500 acres, and within three years they must be actively pursuing U.S. citizenship. They must report any land purchase activity to the Commissioner of Agriculture within 30 days.

*For more information about farmers, visit the agriculture area of our web site, [www.house.mn/hrd/issinfo/agric.htm](http://www.house.mn/hrd/issinfo/agric.htm).*