

DOWN ON THE FARM

REBA/MLTC

JUNE 4, 2026

Gregor McGregor, Esq.

Kathleen M. O'Donnell, Esq.

Introductions:

- REBA – statewide bar association for real estate lawyers handling transactions, title issues, land use permitting and real estate litigation – over 150 years old
- MLTC – statewide organization whose mission is the advancement of land conservation across Mass. by providing education, tools, networking and advocacy for land trusts and their partners
- Land trusts are private non-profit land conservation organizations that work with landowners to acquire land or permanent restrictions that conserve open space. They run the gamut from Mass Audubon and TTOR to local land trusts in your community. There are 140 land trusts in MA, more than any other state except California

Purpose of Webinar:

Introduce real estate lawyers to a very rewarding facet of conveyancing practice – working with land trusts to preserve and protect open space in the Commonwealth

The Story:

Three generations live and work on family farm

- Grandfather and grandmother – semi-retired
- Son and daughter-in-law – operate the farm and live on-site
- Grandchildren – not interested in farming but want to preserve the land and potentially build houses for themselves

Son and daughter-in-law come to see you!

First Questions:

- Who holds title to the farm and how
- Is the land enrolled in Chapter 61 (forest), 61A (agriculture/horticultural)
- Is the land restricted already? State APR, private restrictions in deeds, etc.
- Have they had any conversations with the Town, local land trust, neighbors

Options to Consider:

1. Outright sale of farm to private party, town or land trust but land is in Chapter 61A
 - a. Town holds the right of first refusal
 - b. Town has 120 days to match a bona fide offer to purchase
 - c. If no bona fide offer, they just want to change the use – provide professional appraisal with notice of intent
 - d. Town has right to get its own appraisal, and then parties can hire a third
 - e. Select Board can vote to assign its Right of First Refusal to a qualified non-profit
 - f. Town will need Town Meeting vote to pay for the land
 - i. Using CPA funds – needs CPC approval and town meeting vote. If voted in the annual meeting, funds aren't available until new fiscal year
 - ii. Depending on price, might need an override vote
 - iii. If Town purchases, it must impose a permanent conservation restriction, so it needs a holder – town can't grant one to itself, and state approval takes time

2. Enroll in Mass Department of Agriculture Agricultural Preservation Restriction (APR) Program
 - a. Commonwealth pays the farmer the difference between “fair market value” and “agricultural value” in exchange for permanent deed restriction that extinguishes future development rights
 - b. Benefits:
 - i. Potential qualification for federal tax deduction if sold for less than fair market value
 - ii. Qualifies for Commonwealth Conservation Land Tax credit, other grants and technical assistance
 - iii. reduces federal and state estate taxes
 - iv. retain ownership but can generate revenue through certain permitted ancillary activities
 - v. allowed to sell to another farmer, a new farmer or a non-profit (mixed blessing)
 - c. Detriments:
 - i. State process is time consuming
 - ii. Less flexibility for eligibility
 - iii. State funding is limited

3. Private APR under G.L. c. 184 §31 – Not a new idea but rarely used
 - a. Who's qualified to hold one?
 - i. Governmental units like ConComs, Water Districts
 - ii. Land trusts, can co-hold as well
 - b. Private APR is submitted to MDAR for approval
 - c. Requirements:
 - i. Currently actively devoted to commercial agriculture/horticulture
 - ii. Active agricultural production for at least one year
 - iii. Land has reasonable agricultural vitality

- iv. No minimum acreage requirement (State APR is 5 acres) but if it's less than 5 acres, must show that protection is in the public interest. Forestry is still needs 10 acres. Can include land that is not in active agriculture
 - v. Location, infrastructure, access to markets, soil quality, right to farm bylaw, all help support application
 - vi. marketable title, legal and functional access
 - vii. other factors – protects associated wetlands, provides affordable housing for farmer and/or employees, abuts protected land
 - viii. formal succession plan for farmer
 - ix. APR held by Town or ConCom – only MDAR approval – if held by land trust – need Town and MDAR
- d. Terms and provisions:
- i. Limit or forbid certain activities
 - ii. Allow other uses like weddings and farm to table events with permission
 - iii. Not required to have a right of first refusal
4. Other Considerations – if there's time
- a. Condition of the property – past use as an apple orchard – arsenic
Underground fuel tank for refueling farm equipment
Dumping equipment and canisters
 - b. Legal description – 200 years old with “exceptions” – need a new survey
 - c. Septic or sewer? Affects number and location of house lots

Questions/Wrap Up