

Glossary

actively engaged in farming - participation on the farm on a regular and substantial basis.

actively farming - participation in the day-to-day decision making, labor, administration and management of the farm as well as assuming all or a portion of the financial risks and sharing in any profits or losses.

agricultural land - real estate used for *farming* or capable of being used for *farming* in this state (M.S. 500.24, subdivision 2(g)). Agricultural land means contiguous acreage of ten acres or more, used during the preceding year for agricultural purposes. "Agricultural purposes" means the raising or cultivation of agricultural products or enrollment in the Reinvest in Minnesota program under sections 103F.501 to 103F.535 or the federal Conservation Reserve Program as contained in Public Law Number 99-198. Contiguous acreage on the same parcel, or contiguous acreage on an immediately adjacent parcel under the same ownership, may also qualify as agricultural land, but only if it is pasture, timber, waste, unusable wild land, or land included in state or federal farm programs. Agricultural classification for property shall be determined excluding the house, garage, and immediately surrounding one acre of land, and shall not be based upon the market value of any residential structures on the parcel or contiguous parcels under the same ownership (M.S. 273.13, subdivision 23).

agricultural homestead - agricultural land that is occupied and used as a homestead by its owner, who must be a Minnesota resident, is an agricultural homestead (M.S. 273.124, subdivision 1(a)).

authorized entity - can be a *family farm corporation, joint family farm venture, limited liability company* or *partnership* operating a *family farm* (M.S. 273.124, subdivision 8(a)). The following entities would be eligible for homestead treatment:

- *authorized farm limited liability company (operating a family farm)*
- *authorized farm partnership (operating a family farm)*
- *family farm*
- *family farm corporation*
- *family farm limited liability company (operating a family farm)*
- *family farm partnership*
- *family farm trust*
- *general partnership (operating a family farm).*

authorized farm limited liability company - a *limited liability company* that has:

- no more than five members who are all natural persons or estates;
- only one class of membership interests;
- no more than 20 percent of its gross receipts derived from rents, royalties, dividends, interest, and annuities;
- members who own at least 51 percent of the company either reside on the farm or are *actively engaged in farming* it;
- no interest in or ownership of more than 1,500 acres of *agricultural land*, directly or indirectly;
- none of its members are members in other authorized farm limited liability companies if combined would directly or indirectly own more than 1,500 acres; and
- members may not transfer their interests to ineligible persons (M.S. 500.24, subdivision 2(m)).

authorized farm partnership - a *limited partnership* formed for the purpose of *farming* and owning *agricultural land*, as documented on a certificate from the Secretary of State or on a document registered with the county recorder, and that has:

- no more than five partners who are all natural persons or estates;
- no more than 20 percent of its gross receipts derived from rents, royalties, dividends, interest, and annuities;
- its general partners own at least 51 percent of the interest in the land assets of the partnership and either reside on the farm or are *actively engaged in farming* not more than 1,500 acres as a general partner in an authorized limited partnership;
- its limited partners do not participate in the business of the limited partnership including operating, managing, or

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directing management of farming operations;

- no interest in or ownership of more than 1,500 acres of **agricultural land**, directly or indirectly; and
- none of the limited partners are limited partners in other authorized farm partnerships that if combined would directly or indirectly own more than 1,500 acres (M.S. 500.24, subdivision 2(k)).

beneficiaries - anyone who received any kind of benefit from a trust is a beneficiary. For example, if you had the right to live on property held under a trust, you would be a beneficiary.

corporation - an artificial person or legal entity created under the laws of a state, having an existence separate and apart from that of its members or owners, vested with the capacity of continuous succession (Black's Law Dictionary, 5th Ed., West, 1979). Characteristics of a corporation include: (1) continuity of life, without interruption as a result of the death or withdrawal of the members; (2) centralized management by representatives selected by the members; (3) limited liability for the organization's debts, without recourse to the members; (4) free transferability of interests; and (5) the holding of title to property by the organization itself (*Morrissey v. Commissioner*, 298 U.S. 344, 1935). The corporate name must include the word (or abbreviation): "corporation," "incorporated," or "limited," or the word "company" or the abbreviation "Co." but may not contain "and company," or "& co." or a variation (M.S. 302A.115). Articles of incorporation are effective and corporate existence begins when the articles of incorporation are filed with the Secretary of State (M.S. 302A.153).

family farm - an unincorporated farming unit which has one or more owners residing on the **farm** or who are **actively engaged in farming** (M.S. 500.24, subdivision 2(b)).

family farm corporation - a corporation founded for **farming** and owning **agricultural land** that has:

- a majority of stock held by and a majority of the stockholders are persons (or their spouse) or current **beneficiaries** of family farm **trusts** who own stock in the family farm corporation and the persons and the beneficiaries are related to each other within the **third degree of kindred**;
- at least one of the related persons is residing on or actively operating the farm; and
- no stockholders who are **corporations** (M.S. 500.24, subdivision 2(c)).

NOTE: Transfers of shares to persons related within the **third degree of kindred**, or to a **trust** of which the related recipient is a current **beneficiary**, will not cause a disqualification.

family farm limited liability company - a **limited liability company** founded for the purpose of **farming** and owning **agricultural land** that has:

- a majority of its members are persons (or their spouse) or current **beneficiaries** of **family farm trusts** who own stock in the family farm limited liability company and the persons and the current **beneficiaries** are related to each other within the **third degree of kindred**;
- at least one of the related persons is actively operating the farm; and
- no members who are **corporations** or **limited liability companies** (M.S. 500.24, subdivision 2(l)).

NOTE: Transfers of membership interests to persons related within the **third degree of kindred**, or to a **trust** of which the related recipient is a current **beneficiary**, will not cause a disqualification.

family farm partnership - a **limited partnership** formed for the purpose of **farming** and owning **agricultural land** that has:

- a majority of the partnership interests held by, and a majority of its partners are, persons (or their spouse) or current **beneficiaries** of **family farm trusts** who own stock in the family farm partnership and the persons or current **beneficiaries** are related to each other within the **third degree of kindred**;
- at least one of the related persons is residing on or actively operating the farm, or has owned the agricultural land for at least five years prior to its transfer to the limited partnership; and
- no partners who are **corporations** (M.S. 500.24, subdivision 2(j)).

NOTE: Transfers of partnership interests to persons related within the **third degree of kindred**, or to a trust of which the related recipient is a current **beneficiary**, will not cause a disqualification.

family farm trust - any one of the following may qualify as a family farm trust:

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- a) A **trust** in which:
 - a majority of current **beneficiaries** are persons (or spouses of persons) who are related to each other within the **third degree of kindred**;
 - all current **beneficiaries** are persons, **nonprofit corporations** or **trusts** organized for religious, charitable or scientific purposes; and
 - at least one of the family member current **beneficiaries** is residing on or actively operating the farm.
- b) A charitable remainder **trust**.
- c) A charitable lead **trust** that has:
 - a lead period that does not exceed 10 years; and
 - a majority of the remainder beneficiaries are related to the **grantor** within the **third degree of kindred** (M.S. 500.24, subdivision 2(d)).

farmer - a natural person who regularly participates in physical labor or operations management in the person's **farming** operation and files "Schedule F" as part of the person's annual Form 1040 filing with the United States Internal Revenue Service (M.S. 500.24 subdivision 2(n)).

farming - is technically defined in Minnesota law as the production of agricultural products, livestock or livestock products, milk or milk products, or fruit or other horticultural products. It does not include the processing, refining, or packaging of such products. It does not include spraying or harvesting services provided by a processor or distributor of farm products. It does not include the production of timber or forest products, of poultry or poultry products, or the feeding and caring of livestock that are delivered to a corporation for slaughter or processing within 20 days of delivery (M.S. 500.24, subdivision 2(a)).

NOTE: The words "agricultural products," "livestock," and "horticultural products" are not specifically defined in M.S. 500.24, the corporate and partnership farming law. As used in that law, these terms may not mean precisely what they mean in other contexts. For instance, it is not clear that the term "agricultural products," as used in this law, would include the commercial breeding of pleasure horses; even though that activity is included in the definition of "agricultural products" in M.S. 273.13, subdivision 23, the property tax classification statute.

general partnership - an association of two or more persons to conduct a business for profit as co-owners (whether or not the persons intend to form a partnership) in which:

- "persons" includes individuals, **corporations**, estates, **trusts**, and any other type of legal or commercial entity;
- sharing gross profits does not by itself establish a partnership; and
- a person who receives a share of the profits of a business is presumed to be a partner in that business unless the profits were received in payment for goods or services, as rent, as repayment of a debt or interest, as an annuity, or on account of the sale of goodwill (M.S. 500.24, subdivision 3(a); M.S. 323A.1-01(8), (12); M.S. 323A.2-02*).

* This definition reflects the provisions of the Minnesota Uniform Partnership Act of 1994 (*i.e.*, M.S. 323A). Partnerships governed by a predecessor statute or a comparable statute of another state may have somewhat different attributes.

grantor - is defined as the person creating or establishing a testamentary, **inter vivos**, **revocable** or **irrevocable trust** by written instrument or through the exercise of a power of appointment (M.S. 273.124, subdivision 21).

irrevocable trust - a **trust** which cannot be changed at any time.

inter vivos trust - see **revocable trust**.

joint family farm venture - a means a cooperative agreement among two or more farm enterprises authorized to operate a **family farm** under section M.S. 500.24 (M.S. 273.124, subdivision 8(a)). For homestead purposes, it can only be a combination of other entities qualifying for homestead.

limited liability company - an unincorporated organization created by state law that affords its members limited liability for the organization's debts and the potential to avoid income taxes at the entity level, thus combining the characteristics of a **corporation** and a partnership (Lloyd G. Kepple, Esq.). The name of a limited liability company must contain the words "limited liability company" or "LLC." Other words or letters may be used when the members of the company provide certain professional services including medicine, veterinary, landscaping,

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accountancy, engineering, or law. The name must not contain the words (or abbreviations): "corporation" or "incorporated" (M.S. 322B.12 and 319B.05). Articles of organization are effective and limited liability company existence begins when the articles of organization are filed with the Secretary of State (M.S. 322B.175).

limited partnership - a partnership consisting of one or more general partners, jointly and severally responsible as ordinary partners, and be whom the business is conducted, and one or more special partners, contributing in cash payments a specific sum as capital to the common stock, and who are not liable for the debts of the partnership beyond the fund so contributed (Black's Law Dictionary, 5th Ed., West, 1979). The name of a limited liability partnership must end with "Registered Limited Liability Partnership," "Limited Liability Partnership," "R.L.L.P.," "L.L.P.," "RLLP," or "LLP" (M.S. 323A.10-02). The partnership must file an annual registration with the Secretary of State. (M.S. 323A.10-03).

qualified person - can be a:

- member in an authorized entity;
- shareholder in an authorized entity; or
- partner in an authorized entity.

qualifying relative or surviving relative - definition depends on the type of property:

- Residential property: a qualified relative of the owner or grantor can be a parent, stepparent, child, stepchild, grandparent, grandchild, sibling, aunt/uncle, or niece/nephew (M.S. 273.124, subdivision 1(c)).
- Agricultural property: a qualified relative can be a child, grandchild or parent of the owner or grantor of the agricultural property or a child or grandchild of the spouse of the owner or grantor of the agricultural property (M.S. 273.124, subdivision 1(d)).

revocable trust - a *trust* created to handle the *grantor*'s assets, often called a "living trust" or "inter vivos trust," which only becomes irrevocable on the death of the *grantor*.

third degree of kindred - for the purposes of M.S. 500.24, a person's first degree of kin includes their parents and children; that person's kindred of the second degree includes their grandparents, grandchildren and siblings; and that person's kindred of the third degree includes their aunts, uncles, nieces, nephews, and great-grandparents (23 Am.Jur.2d, Descent and Distribution, section 55).

trust - a fiduciary relationship under which one party holds property for the benefit of another party.

trustee - means the party that holds property rights for the benefit of another party through a trust.