

**C.E.D.R.**



**European Council for Agricultural Law  
Comité Européen de Droit Rural (C.E.D.R.)  
Europäisches Agrarrechtskomitee**

**XXV European Congress and Colloquium of Agricultural Law  
Cambridge – 23 to 26 September 2009**

**XXVe Congrès et colloque européens de droit rural  
Cambridge – 23 au 26 septembre 2009**

**XXV. Europäischer Agrarrechtskongress mit Kolloquium  
Cambridge – 23. bis 26. September 2009**

**Commission II**

**National Report – Rapport national – Landesbericht  
Norway**

**Legal forms for farm enterprises, taking into account traditional  
and industrial farming – Les formes légales de l'exploitation  
agricole, en tenant compte des entreprises traditionnelles et  
industrielles – Rechtsformen des landwirtschaftlichen  
Unternehmens, unter Berücksichtigung von traditionellen und  
industriellen Betrieben**

**Eva Marie Johnsen - Evald Jon Strøm - Aslak Støen**

**Attorneys, Advokatfirma DLA Piper Norway DA**

**XXV. European Congress and Colloquium of Agricultural Law**

**Cambridge – 23 to 26 September 2009**

## **Commission II**

### **National Report for Norway**

**Eva Marie Johnsen - Evald Jon Strøm - Aslak Støen**

Attorneys , Advokatfirma DLA Piper Norway DA

#### **ORGANIZATIONAL STRUCTURE AND COMPANY FORMS WITHIN TRADITIONAL AND INDUSTRIAL FARMING IN NORWAY**

##### **I. Introduction**

Norway is a small country with a population of 4,5 million people and limited land available for agriculture: approximately 3,2 % of the total area of the Country of 324 000 sq. km. At present, Norway has 55 000 active farmers. In 2007 employment in Norwegian agriculture represented 51 600 full-time equivalents. This constitutes 2,4 % of total employment in Norway. Since 2000 employment has decreased with 23 %. In 2007 total income in Norwegian agriculture was NOK 31,1 billion (approximately EUR 36 million).

Traditionally, forestry has formed part of Norwegian agriculture because farm forest has always been operated by farmers. In addition, there are large areas of forest that do not form part of farm forest, where operations may be industrial with separate processing industry. Forest constitutes 22 % of Norwegian land areas.

Reindeer husbandry is also included in Norwegian agriculture. In addition, hunting, fishing and tourism form part of the income base of many farmers.

Norwegian farmers are to a very great extent organized in cooperatives when it comes to processing and trade. There are no special or particular company structures within the farming industry. The most common form of organizing is sole proprietorship.

Norway is not a member of the EU. However, there are two treaties which are especially important for Norway in international relations. That is the EEA agreement and the agricultural part of the WTO treaty.

Based on the EEA agreement Article 19, Norway and the EU shall negotiate the terms concerning trade of selected agricultural products (milk, meat, vegetables and so on) every two years. The reasoning behind this is a desire for a gradual process of liberalization regarding the trade of these goods. The current Article 19 is from July 1<sup>st</sup> 2003. The consequence has been an increase in trade regarding some agricultural commodities. However, the greatest significance of the regulations has been within processed agricultural products.

This report does not include the international and national finance crisis' impact on Norwegian agriculture. The report is mainly based on numbers from 2007.

Before we move on to answer the specific questions, we have found it suitable for the purpose to give a brief overview of Norwegian company law, as well as some selected subjects which constitute an outline of how Norwegian agriculture is organized.

### **A summary of Norwegian company law**

A company is usually a commercial association or economic enterprise which is owned and financed by a number of part-owners. There exist several different categories of corporations in Norway. The different types are usually separated on the basis of the extent of the owner's responsibility for the corporations' debt. How an agricultural enterprise shall be organized must be considered individually in each case. In principle there is a free choice when it comes to organization, however, legal framework and subsidy schemes put limits on what can and should be chosen. The same thing applies for regulations due to markets and border protection. Norwegian agricultural policy is heavily regulated by legislation and economic incentives. In addition, negotiations between the government and agricultural trade associations are held every year where the parties negotiate about prices and other measures. The farming industry has been far more reserved when it comes to choosing alternative organizational structures than the industry incidentally. Greater demand of cooperation when it comes to purchase of machinery and the management of the agricultural enterprise itself, has brought along an increased interest and need for various company formations. The formation of a company can include the entire agricultural enterprise or certain parts of it.

The Sami reindeer husbandry has its own distinctive characteristics and working partnerships. The working partnership consists of one or more families which shepherd and guard the reindeers of the different husbandries together. We will not look closer into this institution, but will in the following present the most common forms of company structures in Norway. This summary is not complete, but involves the most common forms of company and association structures in the perspective of this rapport:

Traditionally, Norwegian agricultural enterprises are organized as **sole proprietorships**. The reason for this is probably that it is the easiest form of enterprise when it comes to accountancy,

taxation and registration. The enterprise is owned and operated on the farmers own account and risk.

In a **private limited company (AS)** (Norwegian statutory Act of June 13, 1997 no. 44) the owners has all together contributed with a paid-up share capital of at least NOK 100.000 (approximately EUR 11.480). The owners/shareholders have no personal responsibility for the company's debt beyond their part of the paid-up share capital. **A public limited company (ASA)** (Norwegian statutory Act of June 13, 1997 no. 45) is a description designed for companies of limited liability with many shareholders. In a public limited company anyone can subscribe for shares. A public limited company must have a share capital of minimum NOK 1.000.000 (approximately EUR 114.416). The limited company form is not much used in the primary agricultural industry. Resent years some agricultural enterprises have split their business in an operating company, which is organized as a private limited company (often as a one-man company), and a sole proprietorship which rents out soil and buildings to the operating company.

**A European Company (SE)** from Societas europaea, is a trans-national European company form similar to the form of a public limited company. The company form was established as from October 8, 2004.

**A company with liability (ANS)** is a company form characterized by the partner's personal unlimited liability for the company's contractual obligations. If the company's creditors do not get satisfying settlement from the company, they can, in principle, claim their outstanding made up by the partner's personal assets.

In a **co-operative society with limited liability (BA)** the partner's responsibility is limited to their deposit percentage, and so that the creditors only can seek recovery in the company assets. Such co-operative societies are not regulated by law, which result in a wide scope of possible regulations in the articles of association. These companies are characterized by alternating share capital and number of members, and the member's responsibility limited to their deposit. These co-operative societies are a heterogeneous group, but the most common forms are the co-operatives.

**A co-operative (SA)** (Norwegian statutory Act of June 29, 2007 no. 81) is a form of organization which is frequently used in Norway. The principle of the co-operative is that whoever engages in the production or make use of it, shall also manage it, so that the profit does not acquire in the hands of external capital owners.

**A co-ownership** comes into being when two or more meet with the purpose of owning one or more capital assets, for instance real property. A property law co-ownership then arises (statutory Act of June 18, 1965 no. 6). The Act is non-mandatory. Co-ownership is an own form of company. If the jointly-held property in a substantial extent is used to exercise economic activity towards a third party, it will no longer be a property law co-ownership, but a non-registered company with liability.

**Co-ownership between holdings** exists when outlying fields of several farms are jointly situated. The land can in immemorial times have been situated in some form of co-ownership. There are lots of variations. It can be a regular co-ownership between two or more real estates,

or some forms of common land where certain farms in a regional society have rights. These rights cannot be separated from the estate according to Norwegian law. In co-ownership between holdings the ownership arrangement is usually divided on the grounds of liability. This is an ancient reciprocal ranking according to the size of the different farms. Originally, it is a tax rate to the authorities. The last comprehensive registration of land was performed in the middle of the 1800. The co-ownership can also be organized in a way that the farmers own different units of the usage and utilization, for instance hunting, pasture-land and fishing. This is remnants of the old Germanic proprietary mentality, in contrary to the Roman way of thinking and organizing.

### **Specific subjects**

There are some specific institutions within Norwegian agriculture, including the allodial privilege and concession regulations. These are some of the fundamentals within Norwegian agriculture and have had a significant impact on the farming business through out history. These institutions stand by today and still mark the Norwegian agriculture considerably.

The **allodial privilege** is an old (written down in the nine-hundreds) distinctive Norwegian legal institution, and an important part of Norwegian agricultural policy. Historically, it has been of great significance when it comes to preserve freehold úrmers. It is enacted in Article 107 of the Norwegian Constitution. The regulations can be complicated, but in principle they solve problems arising from generational change. There are similar regulations in other states.

The allodial privilege is a family right. If a farm estate has been in the family for at least twenty years, the descendants has right to take over the property on probate case, or if it is sold outside the family. For those who are born before 1.1.1965, men precede women. Someone who takes over the property on allodial privilege has a personal duty to occupy and operate the estate. The valuation happens on specific terms. On administration of the estate it can be very favourable.

Resent years there has been several attempts on removing the allodial privilege, but it seems like it still has a strong position in Norwegian society. Studies show that a clear majority of Norwegian farmers also wishes to keep the allodial privilege. The Government has recently suggested that the farmland should be at 25 decares, and the forest area at 500 decares, - in contrary to 20 and 100, which are the existing measures. Estates with less decares than this is not subject to the allodial privilege.

Since the allodial privilege is a personal right, companies cannot obtain allodial privilege. This is a factor that limits the use of holding companies within the farming industry. Transfer to a company (no matter who owns it) provokes the right of the family to take over the estate on allodial privilege.

**Concessionary regulations** form the setting for owning an agricultural holding. The main principle is that the owner himself lives on and operates the estate. Today the duty is of limited duration. The Government has, however, suggested that it should be permanently tied to the estate. The main reason for the concessionary regulations is the belief that personal ownership is the best for Norwegian agriculture, in addition to settlement in rural areas. This is also a well-known principle within the EU. In this way the level of prices is also kept down. It is clear that such rules reduce the possibility for other company forms. Recent years it has been eased on

the regulations concerning lease of land. The Government has also made a proposal regarding coordination of land-areas and allodial law.

## II. The specific questions

The questions which are answered in this rapport use the concept “traditional and industrial farming”. We have interpreted this in the way that the rapport in principle is concerning what happens on the individual farms. We have therefore limited towards processing industry, wholesale links and retail dealers, and will principally focus on what happens on the individual farms, and where the farmer is the owner in his capacity of being a farmer.

Further we use the concepts “forms of cultivation”. With this we understand how the farm is organized as a company, and not what is cultivated on each holding.

### 1. BRIEF SUMMARY OF THE EXISTING FORMS OF AGRICULTURAL CULTIVATION WITH LEGAL REFERENCE

Farming systems	Legal reference	Social aim	Mainly in use as...	Natural and legal persons who can form the structure	Characteristics due to growth capital - subsidy, deduction	The farmers main obligations - pursuant to company law
Sole proprietorship	Certain rules in the legislation when more than 30 employees	Unlimited and personal liability, but total control	NA	Married couples Individuals – the farmer	Production - and price subsidy Investment subsidy Environment subsidy Subsidy of ecological farming Replacement subsidy	Subject to registration if the company has assets worth more than NOK 20 mill./ average number of employees constitutes more than 20 full-time equivalents Subject to registration if the trade employs more than 5 employees at full time

ANS	The Partnerships Act	Unlimited and personal liability, but no duty to make payments	NA	Individuals – the farmer AS-tax benefit ASA-tax benefit Co-operative	Production - and price subsidy Investment subsidy Environment subsidy Subsidy of ecological farming Replacement subsidy	Subject to registration if having an income over NOK 5 mill., average number of employees constitutes more than 5 full-time equivalents, more than 5 partners. In other words only large ANS
AS	The Companies Act	Limited liability, but duty to make payments at minimum NOK 100.000	NA	Individuals - the farmer - outside investors AS-tax benefit ASA-tax benefit Co-operative	Production - and price subsidy Investment subsidy Environment subsidy Subsidy of ecological farming	Obligated to submit the annual accounts Subject to registration
ASA	Joint Stock Public Companies Act	Limited liability, but duty to make payments at minimum NOK 1 mill.	NA	(Rare in agriculture) Individuals - the farmer - outside investors AS-tax benefit ASA-tax benefit Co-operative	Production - and price subsidy Investment subsidy Environment subsidy Subsidy of ecological farming	Obligated to submit the annual accounts Subject to registration

BA / SA	The Act of co-operatives	Limited liability, no minimum requirements due to payments and equity capital. Profit due to individuals trade with the co-operative	NA	Individuals – the farmer AS-tax benefit ASA-tax benefit ANS-tax benefit	Production - and price subsidy Investment subsidy Environment subsidy Subsidy of ecological farming Replacement subsidy Subsidy for joint operation	Obligated to submit the annual accounts if income over NOK 2 mill. Subject to registration
---------	--------------------------	---	----	--	--	---

## 2 TRENDS AND NUMBERS

Organizational structure	2008	2003	1999
Number of agricultural enterprises:			
Sole proprietorship	45 666 Men: 39 173 Women: 6 439	56 308 Men: 48 980 Women 7 328	69 959 Men: 60 914 Women: 9045
ANS	2 783	1 565	462
AS, institutions (i.e. the county municipal as owner) and the like (e.g. co-operatives)	386	358	319
<b>Total</b>	<b>48 835</b>	<b>58 231</b>	<b>70 740</b>

## 3 STRUCTURE AND ACTIVITY OR PROJECT OF ENTERPRISE

*The agriculture has the trend to split itself into sections according to the function of the different markets:*

*Can you distinguish particular forms of organisation that the agricultural cultivation have as an aim:*

- *export of traditional agricultural products;*
- *biological or quality agriculture;*
- *direct sale:*
- *rural tourism:*
- *extensive cultivation (unfavoured zones...);*
- *etc...*

*Could you state in what way the legal characteristics of these legal forms are applied to the activities concerned?*

Beyond the production of food and wood, agriculture plays an important role for settlement, employment and shaping the cultural landscape. Agriculture does to an increasing extent meet international competition and is influenced by changes in the international markets. Norwegian agriculture represents diversity with production of niche products, ecological production and particular quality products, along with some growth in the volume of traditional farming.

For the past 100 years there have been continuous adjustments in Norwegian agriculture. Farms have decreased in numbers, become larger in size and more specialised. The development has gone from labour demanding to a capital and knowledge based agriculture, characterized of high technology. There are tendencies towards more "precision farming". Various surveys show that the development has a positive effect on the income trends for farmers. Primarily this is a result of the exploitation of large-scale farming. On the other hand this has a negative effect on the districts and the wish to preserve the cultural landscape. There are long traditions for working besides the holding to supplement the income, and other sources of income play a larger and larger part of Norwegian agricultural economy.

From standing alone towards to the government and marked, with sale from each farm, farmers now work through political trade organisations and co-operative refining industry.

## **Activity**

The **ecological production** is insufficient to cover the market demand. The government is trying to adjust such production by establishing select committees, action plans and allocations to development measures. Additional subsidies are also provided through the Agricultural Agreement. The number of unites choosing ecological production increased in 2007. Of the total agricultural area, 3.93 % was used for ecological production. The share of ecological farm animals is generally low, while the share of ecologically corn has been stable at about 2.10 % of the total amount of produced corn. In 2007, the highest increase in turnover was within the product groups of eggs, vegetables and meat. When it comes to milk the share is still low.

The form of **direct sale** from producer to consumer is practically ended; it only exists in a small scale for the sale of strawberries and other berries, fruits and vegetables.

**Processing** of foods today mostly happens through the food industry, which is the second largest sector of industry in Norway. It is significant as a generator of value and employment.

The trade of dairy products is dominated by TINE BA (TINE). Mainly this applies to **first-hand trade**, but also processing. TINE was in 2007 owned by 16 300 milk producers. To render possible competition, TINE has a delivery duty to other producers. For example “Synnøve Finden ASA” produces dairy products with milk from TINE, while “Q-dairies” makes products based on milk from own producers. In the same way trade in the first link by slaughtering, processing and marketing of meat and eggs is dominated by Nortura AS. The company was established in 2006 as a merger of all the leading companies in the meat and egg co-operatives. However, within processing there is still a large share of private actors.

Most of the processed foodstuff are distributed and sold through wholesale and grocery trade. Here the chain-stores are increasing their power. There are 4 retailers who, almost equally, divide most of the market between them. In varying degree the chain-stores focus on “short travel foods”.

There are a few **other market channels**; like specialist shops, own markets, pick-your-own, and farm stores, that the State subsidizes. A business concept lately systematized is so-called farm tourism. The farm can offer overnight stay and a chance of participating in the regular farm work, like feeding and taking care of the animals. This agricultural tourism aims mainly at families with small children and for teaching purposes, but it is also popular for adults seeking silence and recreation. Few have made good money on this, and farm tourism seems to be mainly for enthusiasts.

## Structure

There may be many reasons to request co-operation within agriculture. A collaboration can give greater security against disease, flexibility in relation to vacation and leisure time, cost efficiency as a cause of large production advantages and increased specialisation, along with releasing resources for other types of value creation. It can also have a psychological effect because it gives a feeling of strength in numbers.

**Joint operation** is an organised collaboration where two or more farmers meet in joint production. The superior starting point for Norwegian agricultural policy is promoted in St.meld 19 (1999-2000) section 6.3.5:

“The department wishes to stimulate collaboration solutions for the production of milk. Joint operation in milk production has many positive sides for the participants, amongst others economical and social relations. The department believes that joint operation can be a solution for many producers to enable them to continue with their milk production, and will therefore contribute to give joint operations satisfying framework conditions. Joint operation shall be a production form for active users and not a way to adapt to subsidies and quotas.”

Joint operation can vary much in organisation and organizational structure. Often joint operations within the milk production consist of two or three members, 30-40 animals and a

quota of about 200 000 litres. The joint operation can operate the land itself, or buy feed from members, it can rent or own machines, buildings etc. The collaboration is time limited, but usually there are long-term agreements lasting 15-20 years. The holdings continue to exist as independent units. There are clear rules for establishing joint operations, and they must be approved by the Norwegian Agricultural Authority. For example cannot the distance between the holdings exceed 17 kilometres. At the end of 2007 there were 1935 joint operations in Norway. The State subsidises joint operations within the framework conditions.

There are various reasons to enter a joint operation. It can be done to ease the need for investment, a request for a closer and better work environment or the desire to release time for other activities. Research shows that farmers in joint operations collect less income from the farm, but in total earn more. Recently it has turned out that the revenues from the joint operation have decreased owing to the fact that the expenses have increased and that the public subsidies have depreciated.

The subsidy structure for production is degressive. The first cow brings in more than the eighteenth. This is a consequence of the aim in Norwegian agricultural policy. It is what you make, where you make it and to what extent, rather than the form of organisation that determines the subsidy.

The quota system for milk works in such a way that a joint operation is the only rational production system. The rules partly hinder takeovers, but from 2008 it is possible to rent quotas. This may have practical importance because joint operation projects can be risky. Some of the joint operations have been secret leasing with very low percentage of ownership.

**Professionally organized relief teams** are common. Earlier it was common to have so-called "relay rings". These often consisted of friends, neighbours and family who stepped in for one another so that everyone could have a little more vacation and spare time. Today the arrangement is developed and professionalised in teams of relief workers. They function nearly as a temp agency, where a relief worker can step in and replace the farmer. The replacement can be total, like a holiday relief or a relief in case of illness. It can also be partial in the form of extra help with certain tasks. There is a division between fulltime and part time replacement. The first mentioned is a fulltime occupation, while the part time relief worker only works in periods, like on the weekends and vacations.

In relief companies the employer's responsibility is split between the farmer and the company. Normally the company is responsible for the formalities like salary, employment etc. The farmer must ensure that the relief worker does not work more than the law permits, that sufficient education is given and that the safety on the workplace is regarded. The relief company runs quality assurance and vouches for the compliance of the contract of employment. The party must also ensure that the total hours worked does not exceed the limits of the law and that the minimum wage per hour is paid out. A tariff agreement is composed, but it is not of general validity. It is, however, usual for the farmers to use it as a guide line, whether or not the relief worker is organised in a union or not. All the relief companies receiving subsidies must be organised as a co-operative society.

**Organized machine teams** are also common, because modern agriculture requires expensive technical equipment which can often be utilized by several farmers. The parties vary in size and organizational structure. The biggest parties are often organized as private limited companies (AS), while the smaller can be companies with liability (ANS or BA). Common for the parties is that they give a varied offer to their members; besides machine rental they can offer different types of work like repair, digging, transport etc.

#### 4                    **STRUCTURE AND FINANCING OF THE AGRICULTURAL CULTIVATION**

*Which are the legal characteristics of the different forms of cultivation concerning:*

- *the social capital?*
- *the investments?*
- *the special rules of financing?*
- *the special rules of guarantee?*
- *the special rules in favour of the investments or the financing of cultivation? Do particular forms of cultivation exist that favour the speculative investment in agriculture? A company with purely financial aims?*
- *etc...*

There are a countless number of **financial loan- and support arrangements, together with subsidy schemes**. The general rule is that a project cannot be supported with more than 50 % in subsidies from public funds. The example of regular banking service is Country credit. Beyond that there are general public subsidy and loan schemes for the entire country like SIVA and Innovation Norway, along with regional and county regional measures.

**Financing** of the agricultural operation is not particularly different from other business activity. But the agriculture is area- and capital demanding. The average percentages of debts per participating holding have increased since the mid 90s and in 2006 it was at its highest with 44.8%. The percentage of debt varies some in relation to the different forms of operation. Young farmers have more debt than the elders. Sheep farmers and grain producers have a relatively low debt compared to their belongings, while farmers combining pig breeding and corn production have the lowest capital-to-assets ratio. The smallest holdings have the biggest equity-to-assets ratio. The economy in the agricultural section fluctuate each year in conjunction with the weather and market conditions, together with the general level of costs in society and the variation in prices and subsidies. In the period between 1999 and 2007 the total nominal income was between NOK 29 and 31 billion.

It is an aim that farmers shall be secured possibilities for income and circumstances as for the rest of the population. It is also an objective to cut costs as a way of reducing consumer prices and public subsidies. For a period this was accomplished by reducing the price on corn, so that the costs for grain feed and hence the prices for farm animal products could be reduced.

## Market regulations

Norway has for a long time had a strong import protection. Because of this, farmers receive a higher price than in the world market, and the domestic agricultural production grows larger than in a free market. This price difference is called **border protection**. The import protection has contributed to high producer prices and consumer prices compared to our neighbouring countries. But compared to the Norwegian income level in general, the prices may not be that much higher.

It has been established a **price system** with an objective price for milk, egg, corn, apples etc. The objective price amounts to the prices the agriculture may extract from the market in average throughout the year by balanced market conditions and the fixed import protection. The system works like this: if the prices received in the market exceed the objective price with 10 % two weeks in a row, actions will be effectuated to reduce the price level. A time limited administrative reduction of the prices will then be performed.

A so called **milk quota** has been settled for every property. The objective is to adapt milk production to market needs. If the farm delivers more litres than permitted, it will be charged a surplus production tax of NOK 3.30 per litre. It is allowed to dispose of the quotas, but it has to be sold as a whole. 50 % of the quota must be sold to the State, while the remaining 50 % can be sold on the private market. To purchase a milk quota one has to own an agricultural holding with an existing quota. In addition, a holding may rent quotas from other holdings. The quota can be rented joint or split, so more than one can rent from the same lessor. The shortest period of renting is 5 years. The lessee pays a provision of 25 % of 1 years rent.

## Subsidy schemes

Subsidy schemes are important when considering type of organizational structure. Some of the schemes have special terms for co-operatives and companies. The last years there have been a desire to simplify the use of policy instruments in the agriculture. Many schemes have been joined. The State wants to contribute to a steering based on frame work rather than one highly based on details, and in that way strengthen the farmer's roll as a self-employed business man or business woman. We will here give an overview of some of the most important subsidy schemes.

**Production and price subsidies** together with investment measures are the subsidies of highest economic importance for the agriculture in Norway. Price subsidy is a subsidy connected with the produced amount by a rate per produced unit. The size of the production will thus be vital in determining how much the producer will receive in subsidy. The rate can be the same nation wide or differentiated geographically. The production subsidy is connected to the use of production factors. For example, it can be given area or farm animal subsidy per area or farm animal unit. In other words will the size of each farm determine how much the farmer receives in subsidies.

In principle one may say that a price subsidy favours the production (the amount of meat, milk etc.) while a production subsidy favours input factors (area and number of animals). Production-

and price subsidies are paid through distributive trades as opposed to the subsidies which are paid directly to the farmer. Enterprises which only in a small scale contribute to the production of collective goods and which barely contribute to the employment and settlement pattern in the districts, receive less budget support in the form of price and production subsidies. They must to a larger extent base themselves on income from the market and are more dependent on the border protection which lies in the import protection.

For the past 20 years it has been emphasized to reduce price subsidies and increase the more production neutral and quantity independent subsidies, based on area and number of animals. The reason for this is a wish to moderate production pressure, reduce overproduction especially of meat and milk and have a more environmentally friendly production.

**Investment grant** are financed by Innovation Norway. The aim is to reduce the costs for each individual farmer. The most central investment grants are community development funds and the value creation program for food.

With community development funds we mean amongst others investment subsidy and interest-free loans over the Agricultural Agreement. These funds, directed towards companies, are managed by Innovation Norway, while the county governor manages funds for research and adaption. In addition administrates the Ministry of Agriculture and Food funds directed towards business development of interest for large parts of the country.

The **environment subsidy arrangement** is administered by the Agricultural Development Fund. This is support and subsidy towards environmental measures. A national environmental program has been made. In this lie area- and cultural subsidies, contribution to ecological production and subsidies for animals on rough grazing pasture-land. In addition there are regional and local environmental programs with different subsidy schemes.

The subsidy rates per animal are reduced gradually by an increasing livestock. This implies that if the enterprise is organized as a joint operation the subsidy will be lower than if the participants had received separate subsidy for their share of the livestock. The area- and cultural subsidies are on the other hand calculated separately for each participant.

**Subsidies for ecological farming** are given to farmers who reorganise their production. It is given directly in the form of reorganisation- and area subsidies. In addition, every year funds are put aside in the agricultural settlement for development measures in ecological farming. In 2008 this was NOK 43 millions. The demand for ecological products has increased the past few years and it is considered as a marketing possibility the Norwegian agriculture should utilize better.

**Subsidy for relief workers** is one example of subsidies for health benefits and social arrangements. A farmer which qualifies certain conditions may get a state contribution to hire a relief worker. One of the terms is that the farmer can document the costs of relief. The subsidy is based on the number of animals the farmer holds. In 2008, 35 000 farmers qualified for relief measurements, which generates between NOK 5 000 and 58 000 a year per farmer.

With exception of companies with liability, relief subsidies are not given to enterprises organised as companies. Relief contributions are neither given to someone who has trade income from the

property it is applied relief for. Relief subsidy is further not given to reciprocal relief between partners in a generation partnership.

**Special subsidies to joint operations** are given to stimulate such establishments in dairy production. The subsidy is given directly so there is no requirement to document the expenses.

A subsidy to “**short travelled food**” is also given. This means local food is a field of priority. The tourism industry and restaurants use ever more products from a local farmer or some distinct specialities. This has environmental advantages, and the proximity to the production place gives a larger awareness in the population about the local environment.

Transport of food is associated with the release of fossil fuel. The shorter the food “travels”, the less pollution is created. But the profit of “short travelled food” is disputed. There are studies which show that in the greater context it will - in relation to a marginal food producer as Norway - be an advantage to import the food.

Another aspect of buying local produced food is that this contributes to back up local trade and maintain the Norwegian cultural landscape.

## 5 STRUCTURE AND MANAGEMENT OF THE ENTERPRISE

*How can the form of cultivation influence the organisation of management of the enterprise and the decisions taken within cultivation (management, right to vote, decision, consent...)?*

This depends on what kind of company structure one chooses to operate through. We will therefore examine the different types of companies or structures it is possible to operate through in Norway.

A sole proprietorship is not a company. Apart from a private limited company which may consist of one participant, all other company structures require at least two participants.

A **sole proprietorship** is neither a legal entity of its own. For instance, it is not relevant to distinguish between the owner’s personal debt and the company’s debt, because the owner has a personal and unlimited liability for all debt, without regard to where it comes from. This comprehensive liability is being compensated for through the fact that the owner decides everything in the company.

For a so-called large sole proprietorship which have had in average more than 30 employees the last three fiscal years, there applies some requirements equal to what is required in companies with liability. This concerns representation access for the employees to the partnership meeting and perhaps on the board.

The partnership meeting is a mandatory organ in a **company with liability (ANS)**. In principle all the partners have a right to participate on the partnership meeting. And if the company has a board of directors or a manager, they have a duty to be present at the meeting. If the company

during the last three years has had in average more than 30 employees, these employees may choose two members for the partnership meeting.

The partnership meeting is the supreme agency in the company. This means that it can make decisions in all matters. The partnership meeting also has the right to give instructions and to reverse decisions if the company has a board of directors or a manager. All the partners have a right to vote in the partnership meeting. There is in principle a request for unanimous decisions.

When the company neither has a board of directors nor a manager, each partner may carry out actions which are natural and reasonable in the daily conduct of the company, and which are not resisted by another partner. If there is a board of directors or a manager the rule is the opposite.

The board of directors is not a mandatory organ in a company with liability and therefore needs to be arranged. There is no minimum requirement to the number of members – the company may have a one man board. The members are chosen by the partnership meeting. The board of directors has the authority to be in charge of the general management of the company, but it cannot make decisions that according to the circumstances are of extraordinary nature or of great significance. This comes to the partnership meeting.

The manager is neither a mandatory organ in a company with liability. The manager's authority implies to conduct the daily management. This does not include matters of extraordinary art or of great significance. The relationship between the manager and the board of directors needs to be determined concrete, in the light of the type and size of the company.

In a **private limited company (AS)** or a **public limited company (ASA)** the shareholders' meeting is the company's supreme agency. This implies that the shareholders' meeting has a general right to instruct, and to reverse decisions made by, the board of directors. It is in principle only through participation on the shareholders' meeting that a shareholder has the opportunity to influence on the directing of the company. The shareholders' meeting can as a point of departure take up matters and make decisions related to any business concerning the company, included who is to be in the board of directors. The shareholders' meeting is a closed meeting for the owners. No one but the shareholders is entitled to attend. Each shareholder is free, through his right to vote, to ensure his economic interests in the investment.

As a main rule each share counts one vote, which means that all the shares represents an equal right in the company. However, it can be restrictions on voting rights in the articles of association. A decision by the shareholders' meeting requires a majority vote. From this there are certain exceptions. For instance, it takes a qualified majority by 2/3 to change the articles of association.

The company's leadership consists of the board of directors, a manager and possibly a corporate assembly. A board of directors is mandatory, and the members are chosen by the shareholders' meeting. First of all the board of directors has an administrative responsibility, which involves a direct liability for its own administration of the company. Secondly it is responsible for supervision, which means a responsibility for others' actions and omissions in relation to the administration, including the manager and the administration. The board of directors may instruct and reverse decisions made by the daily management.

The manager is engaged, as a point of departure, by the board of directors. He or she is in charge of the daily management of the company's business and shall follow guidelines and

orders given by the board of directors. The manager has some legalized rights. The board of directors and the manager have in fact overlapping competence, but the board's power is wider.

The corporate assembly is as a point of departure mandatory in companies with more than 200 employees and shall consist of at least 12 members. Since it is very rare that a cultivation enterprise has more than 200 employees, corporate assembly is a rare thing.

The principle for a **co-operative** is that those who engage in the production or makes use of it, also manage it, so that the profit does not acquire in the hands of external capital owners.

The annual meeting is the supreme authority. All the members have the right to meet, and each member has, as a point of departure, one vote. People with shared membership can only cast one vote. A member has the right to take up a matter on the annual meeting by reporting it to the board before the notice of the meeting is being sent out. A regular decision on the annual meeting requires a majority of the casted votes. The chairman of the board and the manager must be present on the annual meeting and they have the right to speak. Other members of the board may be present.

All co-operative enterprises must have a board. The board members are elected on the annual meeting and shall, as a point of departure, be composed of at least three members. If the company consists of more than 1000 members both sexes shall be represented in the board according to special rules dependent on the number of board members. The board is responsible for the regular administration of the company, included to supervise the manager and the business in general.

The company is required, as a point of departure, to have a manager, but the company may decide otherwise in the articles of association. The board engages the manager. The manager is responsible for the company's daily conduct, except in matters of extraordinary art or of great significance for the company. In general the manager must follow guidelines and orders given by the board.

When it comes to a **co-ownership** the co-owners own equally large shares, unless something else is arranged. But this is unusual for agricultural holdings. Decisions are normally made through a majority vote.

A particular problem is that very many estates of a deceased person (over 5000 of ca. 50.000 agricultural holdings in Norway), which owns an agricultural holding, is not being administrated in many years. This may be caused by a by-passing of the rules concerning the duty to occupy and operate the holding, disagreement among the heirs etc. The holding has often a low economic value, but it may have a significant emotional and recreational value to the heirs. This means that many agricultural resources are not soundly operated. Such a co-ownership opens for disagreement. The Government now proposes that the agricultural authorities may be capable of setting down a deadline for the accomplishment of the administration of these estates. In the administration of an estate applies a variant of the allodial privilege, **the primogeniture**.

*How can the form of cultivation have influence on the responsibility of the finance management of the cultivators (limits, contractual debts or not)? Is the common practise of the banks (personal security or family risk) able to remove these limits of responsibility by offering the creditor a larger guarantee?*

*In what way can the form of cultivation have influence on the criminal responsibility (of the cultivators)?*

The answer to this is in general that the choice of company structure within the agriculture contributes to steer the economic risk exposure one undertakes. As presented earlier in the rapport, a sole proprietorship is often chosen by the cultivators. One of the reasons for this seem to be that it is this type of ownership and structure the agriculture has been based upon "for all times", rather than a focus on the economic risk exposure. A sole proprietorship is not really a type of company, but a term used on economic activity run for one individual's account and risk. By choosing a sole proprietorship one gets a personal liability for the running. To the extent one borrows in connection with the enterprise, in the form of purchasing machinery or perhaps a new building, the banks will often demand security in the machinery or the real estate. By depositing security through a third party the economic exposure will decrease; in this way one will not to the same extent be exposed to a bankruptcy if one should get payment difficulties.

If one instead chooses to establish a limited company to run the production one will not be personal liable for the economic risk at a potential bankruptcy. Within for instance forestry, where the operation is comprehensive both geographical and economic, such a company to run the operation could be beneficial since a potential bankruptcy would not affect the rest of the running.

Like for the rest of the society, one can only limit the economic liability through the existing types of company structures. Nevertheless, it seems to be fewer bankruptcies and less economic mismanagement within the agriculture than elsewhere in the society. This may be due to several reasons. To point at some, it may be due to the fact that activity within the agriculture is to a greater extent conducted in a small-scale size. At the assessment of what one can deposit for securities a concrete evaluation is made of each building or machine. In society elsewhere the assessment may be done in the value of a company's estimated goodwill, potential profit and machinery and plant, values that depends on the market fluctuation in a completely other way. In addition, the market fluctuation is reduced by subsidies from the authorities. In this way the earning for the cultivators is secured notwithstanding the fluctuation. Beyond this may also be mentioned that the social network within the agriculture often is good. It is not unusual that the extended family steps in when the farmer meets problems. The cultivator often also has a good relationship to the local bank, which may give extra assistance when problems occur. Finally is mentioned that it is very common that the cultivator supplements the income by taking another job, which secures a stable economy, or perhaps that the partner has a job besides from the holding.

The choice of operating mode will not in itself affect the cultivator's possibilities to make use of the legal system. We have no special agricultural courts. In contract one can agree to arbitrate a potential conflict. This is not particular for the agriculture, but may freely be arranged in any contract.

## 7 FORM AND TAXATION

*Which are the elements of taxation (special or of common law) that are applicable to the agricultural cultivations favouring:*

- *the transmission of cultivations*
- *relief of taxation*
- *the investment*
- *etc...*

Generally applies the same tax rules for agriculture cultivation as for other industry. Still, taxpayers with a positive trade income from agriculture have since 2000 been able to subtract in the general income an agricultural tax deduction.

**This agricultural tax deduction** in the general income is given to taxpayers who either have had income from business in the form of farming, market garden or gardening more than half of the income tax year, or have conducted bee-keeping or fur farming as a business.

The condition for the tax deduction is as a main rule that the tax payer has lived on the production unit according to the rules on national registration more than half of the income tax year. It is not required that the taxpayer owns the production unit. The agricultural tax deduction may thus be given to a person who rents or leases the production unit if the remaining conditions are fulfilled.

This tax deduction is in other words personal, and one will not obtain the agricultural tax deduction if the business is organized as an AS. The deduction is given in a way that for instance makes it possible to keep the prices down. For 2008 the general tax deduction was NOK 54 200.

It is also a fact that form does not involve a special tax regime. It is the reality that counts; without regard to in what form the business is run. The exception is the so-called agricultural tax deduction.

**The tax rules** are, as a point of departure, neutral so that choice of company structure does not imply different consequences for social capital, investments, financing and guarantees, - except the agricultural tax deduction, which only is given to physical persons who is supposed to occupy and operate the holding. This is the arrangement ever since 1992. There is a duty to occupy and operate all agricultural holdings. Hardly any limited companies have been given a concession to own an agricultural holding. There is a restrictive practice. But a company to run the production can easily be set up. Then, as mentioned, one loses the agricultural tax deduction.

**Accountability** can be "complete" or "limited". The partition between complete and limited accountability is tied up to the organizational structure, and to a certain extent to the economic size. The partition is in other words independent of the run industry. For limited companies the accountability is absolute, while there are rendered exemptions for those organizational structures where one usually finds the agricultural enterprises, namely the sole proprietorships, the co-operatives and the companies with liability of little significance. All the limited companies together with other accountable businesses defined as "big companies" have in addition a duty

to send in the annual accounts, the annual report and an auditor's statement to the Register of Company Accounts. Within the Norwegian primary agricultural structure, this is normally just relevant for agricultural industries organized as limited companies.

The taxation takes place both within the company and on the assets each shareholder gets apportioned, i.e. the share dividend, other withdrawals or gains.

**The liability to register** concerns all who has employees or runs economic activity. One is obliged to be registered in the Central Coordinating Register for Legal Entities. The main condition for a liability to register in the Register of Business Enterprises is, except for limited companies, that the enterprise runs business activity. This involves for instance that an agricultural holding organized as a sole proprietorship, which trades purchased goods or which employs more than five permanent employees in full-time posts, must be registered in this register.

As an introduction to a **generational change**, the agricultural business will often be leased (Act of 25. June 1965, nr 1) to the younger generation for a period of time, or the younger and older generation runs the business together some years in a partnership. This partnership is considered as an internal partnership, i.e. it complies with the rules for companies with liability when it comes to tax rules etc., yet the business does not appear as a company with liability outwards.

In a co-ownership the tax assessment takes place after the gross method, i.e. that the allocation of income and expenditures is done according to the co-owners pro rata share.

Beyond that the tax rules are highly detailed and of little general interest.

Norwegian producers of agricultural products are decreed a **purchase tax**. Further, every Norwegian produced and imported agricultural product, which is used in trade by the preparing or making of food articles and natural stimulants, is decreed a **research tax**. Besides, there is an **environmental tax** on pesticides, earlier also on fertilizers. This tax is one of several means to achieve both national and international environmental objectives. The tax revenues are i.a. used to finance different environmental protection measures. Finally there is the **food production tax**. This tax shall finance the costs of supervision and control carried out by the Norwegian Food Safety Authority. The tax covers domestically produced raw material, together with finished products, semi-finished products and raw material imported for human consumption. The customs authorities are responsible for the collection of the tax on imported goods.

In Norway we have a non-consistency principle at the calculation of **capital transfer tax**. This means that inherited means in principle shall be set to market value at the time of the tax evaluation. But the heritage of shares involves a substantially lower tax than if one inherits directly. Since the number of unincorporated enterprises is high within the agriculture, the industry is struck harder than other industries. This is in a certain way evened out by the valuation on agricultural holdings.

## 8. FORM AND SOCIAL PROTECTION

*In which way can the form of cultivation have influence on the social protection of the cultivators?*

The company structure chosen by the cultivator does not affect the right to make use of the different welfare services that exists. The welfare services are universal and on a political level it has been aimed at maintaining neutrality both inwards the agriculture and in society as for the rest. Special arrangements for those who have had the main section of their income from farming/market garden and forestry are early retirement pension and relief subsidy.

As regards **the early retirement pension**, the object with the arrangement is to contribute to ease the generational change by providing for the cultivator to make over the holding before he or she is too old to operate further. It is only the user who can release the early retirement pension. By 'user' is meant either the owner or the tenant of agricultural holding and this one's spouse or cohabitant. It is possible to apply from the age of 62.

**The relief arrangement** implies relief at holidays and leisure time, pregnancy, illness, death and leave of absence. The relief must be organized as an employer/employees relationship, but the applier may let a relief party, a relief ring or the municipal have the employer's liability. It is further a condition that the applier has a business income from the enterprise on minimum NOK 32 752 (2009). The arrangement is a reimbursement scheme which gives the applier his or her expenses related to relief refunded.

The employment Protection Act regulates the employer's and the employee's rights and duties. Foreign- and seasonal workers have rights according to the law just as the rest of the employees in Norway.

## 9 FORMS AND STRUCTURES

*Which are the main legal structures that combine several legal forms of enterprises that seem to you the most interesting, considering:*

- *the transmission of agricultural cultivations*
- *the development of activities in agricultural production*
- *the development of agricultural activities combined with non-agricultural activities linked to rural tourism, to restoration of rural areas etc.;*

*Can these structures be combined with indirect cultivation (lease, unstable occupancy agreement...)? Which of these issues are of advantage?*

As regards the question on juridical main structures it is natural to separate between the level of processing and the individual level of holding. At the level of processing one finds in Norway, as in many other European countries, structures in the form of cooperative societies, but also a number of limited companies. An example on an enterprise run through a cooperative society in Norway is Tine BA. This corporation has five regional dairy companies and has its core business within milk production. Within cooperatives as an operational structure one finds examples like

Honningsentralen and Pelsdyr og avl. Synnøve Finden is another big company within dairy production and is in this way a competitor to Tine BA. The company is organized as a public limited group of companies (ASA). As regards the main structures within the individual level of holding the ownership structure in Norway is based highly on personal ownership. The main cause to this is the allodial law and its solid foundation within the agriculture ever since the year of 4-500. When we are going to look at juridical main structures in combination with different juridical company structures it is natural to begin with the individual level of holding. This is also the background for the delimitation introductory in the report against distribution and processing.

As a point of departure land and operation are gathered on one person's hand. This results from the Allodial Rights Act - and the Concession Act builds on this duty to occupy and operate the holding. Nevertheless, in 1995 came a new Agricultural Act (which also later has been further liberalised), and this act gave the opportunity to hire out the operation. Subsequently it has been a development in the direction of more and more renters. The share which owns land without running it is now roughly 40 %, still increasing. In this connection one often sees a change in the operating form and in the judicial form. An example of such a change we see especially north in Norway where there is an increasing trend that estates are owners. Most often this regards small holdings where the heirs neither can nor wish taking over the holding as a consequence of uncertain factors in the operation as such, without adequate capacity in the production or insufficient yield. The trend is that the soil is leased to bigger holdings.

A similar development one sees within the stock farming/milk production where more and more unites in joint operations. This is not a matter of leasing or transfer of land, but rather a form of cooperation which gives every one greater freedom and security in situations like for example illness and pregnancy. The contribution to relief is based on the same mindset.

We find joint operations within different forms of operations. But it is quite prominent in the milk production. Other examples may be joint operations within the potato production with a specialization on seed potatoes or delivery of potatoes to separate sectors.

When the holding is attached to big lands of forestry, there might be natural that the forestry is established as an AS (private limited company) when this typically can be operation for processing, while the rest of the holding is owned and operated personally, perhaps with parts of it hired out.

An increasing trend is cooperation on hiring out hunting privileges and fishing rights in attachment to the farming. But one cannot separate or hire out the privileges or rights for more than 10 years.

Combining different forms of operation gives an increased flexibility within the agriculture - which earlier might have been considered static. In Norway we have several examples of big corn farmers whom have organized the operation in an AS, while they in addition have a full-time job besides the holding. This is possible since we in Norway have a type of climate that only renders reaping once a year, as well as a good deal of the work is done mechanical.

Flexibility in the operation form enables to partition different operations into different juridical structures, which again can reduce the risk in operating activity by avoiding personal liability for the total production.

## 10 OTHER QUESTIONS

*Do you think the development of agriculture requires particular legal forms for the agricultural cultivation?*

In the light of the general agreement on Norwegian agricultural policy, we assume that it is not practical with other forms of organization than those used today.

## 11 MAIN SOURCES

1. Perspective on Norwegian agriculture – situation and development features 2008 (Norwegian Agricultural Economics Research Institute 2009)
2. Norwegian agriculture – a situation description 2009 (Norwegian Agricultural Authority 2009)

## 12. THANKS

We also wish to thank the students Trond Alan Wehn, Limita Lunde, Hanne K. Starberg, Rannveig Bakke Tvedten og Ingrid H. Martinsen for their important contributions to the report.

## ENCLOSURE

Norwegian agricultural law is part of the Germanic tradition with strong elements of Roman law.

Norway is not a member of the European Union, but is connected through the EEA agreement of 02.05.1992, which was included in Norwegian legislation by act of 27.11.1992. According to chapter 2, agriculture is exempted. Nevertheless, the main principles of the Treaty of Rome apply.

Norway has a population of 4 533 000, is ca. 1752 km long, stretches from 57th to 71st degree of latitude and borders to Sweden, Finland and Russia. The coast is ca. 17 000 km long.

One fifth of the Norwegian land area, some 324 000 km<sup>2</sup>, is owned by the public authorities.

There are few areas in Norway which are suitable for agriculture. For topographical reasons, agricultural areas in Norway are moreover, small, far-flung and in some places difficult to manage. Only some 3.2% of the total land area (with exception of Svalbard) is cultured land. This is very little compared to other countries.

The most important limiting factor is length of the growing period and the sum of heat during this period. Rain conditions, the Gulf Stream and to some degree favourable light are factors which may affect plant growth positively. Spring droughts have however, not been unusual in some important agricultural areas. The cool climate has a favourable effect on the occurrence of plant diseases and pests. The geographical placement entails that Norway lies on the outer edge of growth areas for several important crops, and is one of the few countries in which sugar crops are not grown. The climate also contributes to corn crops being far lower than in many other countries. In large parts of the country the cultivation of animal feeding stuffs, in the main grass, is by far and large the only possibility. Livestock farming based on the cultivation of grass is therefore of great importance in Norwegian agriculture. This gives an indication of the kind of natural constraints must be taken into account.

Norwegian agricultural policy has as its purpose to secure sufficient foodstuffs in the country, as well as providing the possibility for people to be able to live in the whole of the country. The self-sufficiency rate in 2005 was 56%. The State's monopoly on corn was repealed in 1995.

The challenges for Norwegian agriculture are to be found - beyond the natural limitations - in the small units and cost levels in relation to other countries. In order to achieve settlement throughout the whole country, reliable food production and not too expensive prices, regulations for various kinds have been introduced. Conditions have been placed to own farms, various kinds of regulations governing import of foodstuffs at certain times, toll duties etc.

Norwegian farms can be quite large in area, but the cultivation potential is fairly small. On average a Norwegian farm consists of ca. 18.6 hectares arable land. This means that traditional Norwegian agriculture is a combination of agriculture and forestry, as well as exploitation of far-lying fields, grazing, hunting and fishing. This also provides possibilities for sale and hiring out of building plots for leisure purposes and tourism.

The resources found in outlying rough-grazing areas are often organized in so-called common lands of various kinds. Commons are largely defined as a joint property between all the farms in a community where everyone enjoys special rights, or a publicly owned area where all properties in the surrounding communities have special rights. This facility is now undergoing a comprehensive modernization process.

There is only a small amount of specialisation in agriculture through factory production. But small-scale production is a growth area. A characteristic of Norwegian farmers is that they by and large base their activities on a broad spectre of products, and hardly specialise at all. There are large variations in various parts of the country.

Norwegian agriculture is largely dependent on subsidies. These are granted by means of the so-called "agricultural negotiations", and appurtenant legislation, see review item 2.7.

Pressure groups have major significance for Norwegian farmers. The most important are the Norwegian Farmers' Association, Norwegian Farmers' and Smallholder Association and the Norwegian Forest Owners' Association.

All hunting and inland fishing are landowner rights. Elk hunting especially provides considerable resources. Ca. 35 000 elk are shot each year. With an average weight of 130 kg of edible meat this provides a total of 4 455 000 kg. Everything is consumed in Norway.

Long-lasting hiring out of land plots for leisure purposes is widespread. Lessors are in the main farmers who thereby gain considerable annual income. The authorities wish to regulate the annual rent through legislation, as well as limit tenant's losses or undesirable transfers of assets to lessor upon expiry of the tenancy. There are regulations that the tenant is entitled to have the land plot released at a reduced price upon expiry of the tenancy. This is the source of innumerable disputes as well as political conflict. At present there are three cases before the Supreme Court concerning whether such releasing clauses are unconstitutional.

An important factor for Norwegian farmers and forest owners is the so-called allodial right, which gives the eldest child (regardless of sex) the right to take over the farm. The allodial privilege has been the source of many disputes before the courts.

Norway has sovereignty over some islands in Antarctica (Bouvet Island, Peter 1st Island and Queen Maud Land) and Jan Mayen and Svalbard (Spitsbergen) toward the Arctic. Here there is no agriculture apart from hunting which is assigned to the landowner.