

THINGS TO CONSIDER WHEN STARTING OR OPERATING AN ALPACA RELATED BUSINESS

A Three-Part Series from GIRCom

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Read [Part Two](#) Online

Part Three

Some basic considerations of zoning, covenants, agricultural exemptions, and contracts follow in Part Three of “Things to Consider When Starting or Operating an Alpaca Business” brought to you by GIRCom:

1. Zoning, Agricultural Exemptions, Covenants, and Easements
 - a. Zoning is normally used by county or city governments to control land uses within their borders. Zoning maps will usually be available online or in city or county land-use planning offices. If a location is zoned for agriculture, there may still be limits to the number of animals you can keep, based on your acreage, Animal Unit Capacity per acre, water rights, or other factors. Be sure you check.
 - b. Agricultural exemptions are available in some states and offer relief from property taxes if you are using your land as an agricultural operation. These can be valuable in some areas, especially where there are expensive houses and very large lots. There usually are minimum acre requirements and the animals must be there a certain percentage of the year. If your property taxes are onerous you should check into your state or county's requirements for an exemption.
 - c. Covenants are imposed by sub-dividers and developers and are usage restrictions intended to stay with the land. If there are covenants, you must receive a copy at closing on your property. The covenants will usually contain provisions for changing them, but if they don't, state law will usually contain a procedure for altering or removing old covenants (more than 20 years old, for example). In many old subdivisions, alpacas were unknown. Horses were frequently allowed, but all other livestock, such as sheep, goats, and chickens, were not permitted. Newer subdivisions tend to allow llamas and horses, but still do not specifically cover alpacas.

Many times, homeowners in a subdivision will have an understanding among themselves to ignore the covenants, since the only person with legal standing to sue over a breach of the covenants is another homeowner. It can be a legal quagmire if you don't get along with your neighbors, so it is best to make sure your alpaca ranch is in compliance with the covenants or that you can change them if the need arises. Note also that if you need to borrow money for your alpaca business, the lender will be very interested in whether your covenants allow the business in the first place. Covenants are the most common type of land-use restriction in the United States.

- d. Easements are legal rights of another over a portion of your property. Utility companies, water companies, road easements, and access easements are examples. Access is an important type of easement that has caused endless litigation in the western states. For example, if a ranch was subdivided and part of it did not have access to a road, one parcel (called the “burdened parcel”) might have an access easement across it. Problems can arise if the easement was never recorded and subsequent owners get into a dispute. Make sure that if you have to cross another person's land to access yours, there is a recorded easement. Most county records have this information indexed by names of owners or by legal description of the property. You don't want to be fighting in court over access with adjacent property owners who have suddenly decided to close and lock their gates on shearing day!
2. Contracts and the UCC (a few words, not a treatise)

- a. Contrary to popular belief, the UCC is not law, nor is it particularly uniform. It is a model code devised by practitioners and academics who desire or aspire to see uniform commercial rules enacted throughout the United States. The states are free to adopt or change parts of it, and some states have not adopted any parts. Article 2 is the “sales” portion of the UCC and it is an attempt to codify the common law of contracts.
- b. A contract is an agreement between two parties. It must show a “meeting of the minds” and each party must be fully aware of all relevant facts. “Consideration” is a legal term and must be furnished by both sides to a contract for it to be binding and enforceable. A contract can contain any terms to which both parties agree and which are not violations of social policy, and courts will not interpret a contract which is clear and unambiguous.
 1. A meeting of the minds means the parties intended to, and actually made, an agreement;
 2. Consideration can mean, for example, money, services, property, or an agreement to perform or not perform an action;
 3. A violation of social policy can mean something that promotes racial, religious or sex discrimination, or that discourages persons from marrying or having children, or other things that are considered socially desirable;
 4. A clear and unambiguous contract is something that is not subject to varying interpretations by reasonable people;
 5. A court will “interpret” an ambiguous contract by trying to ascertain what the parties had in mind by making the agreement;
 6. A “voidable” contract is one that a court can throw out because it violates public policy or for some other compelling reason such as inequality of bargaining positions;
 7. A contract that is “void” is one that has been obtained by fraud, duress, or something that leaves one party completely in the dark about some really important fact.
- c. Most states have adopted some provisions of Article 2 of the UCC, but each state may have tweaked the provisions that they have adopted. It is very important for breeders to be familiar with the law of their state, as well as the law of any state where they may do business.
- d. If the UCC does not cover all provisions of your contract, the “common law” (or provisions in the contract) will govern. All states except Louisiana have adopted the “common law” which originally came from English law (Louisiana’s law derives from the Napoleonic Code). This can be compared to a “default” mode on a computer.

This is why no one should ever sign a contract without reading it!!!

This concludes our three-part series on “Things to Consider When Starting or Operating an Alpaca Business”

*** This article is not intended to provide legal or tax advice. You should consult your own lawyer or tax adviser for advice specific to your own circumstances.**