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BY: *C. DeBault*

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AGRICULTURE

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Chapter 35

AGRICULTURE

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Right To Farm

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[HISTORY: Adopted by the Town Board of the Town of Kingsbury: Art. I, 8-24-1992 as L.L. No. 1-1992. Amendments noted where applicable.]

ARTICLE I  
Right To Farm  
[Adopted 8-24-1992 as L.L. No. 1-1992]

§ 35-1. Authority.

Under § 10 of the Municipal Home Rule Law, the Town of Kingsbury adopts this Right To Farm Law.

**§ 35-2. Definitions.**

As used in this Article, the following terms shall have the meanings indicated:

**AGRICULTURAL FARM OPERATION** — Any person, organization, entity, association, partnership or corporation engaged in the business of agriculture, whether for profit or otherwise.

**AGRICULTURAL LAND** — All that real property within the boundaries of the Town of Kingsbury currently used for agricultural operations or upon which agricultural operations may in the future be established.

**AGRICULTURAL PRACTICES** — Any activity, including the cultivation of land, the raising of crops or the raising of livestock, poultry, horticulture, timber, apiculture and fur-bearing animals. Further, "agricultural practices" shall mean any activity now permitted by law engaged in by a farmer as defined herein, in connection with and in furtherance of the business of farming and shall include, without limitation, the collection, transportation, distribution and storage of animal and poultry wastes; storage, transportation and use of equipment for tillage, planting and harvesting; transportation, storage and use of legally permitted fertilizers and limes, insecticides, herbicides and pesticides, all in accordance with local, state and federal law and regulation and in accordance with the manufacturer's instructions and warnings; construction of farm structures and facilities as permitted by local and state building codes and regulations; and construction and maintenance of fences.

**TOWN** — The Town of Kingsbury, Washington County, New York, and its Town Board.

**§ 35-3. Policy; findings.**

- A. It is the declared policy of this town to enhance and encourage agricultural operations within the town. It is the further intent of this town to provide to the residents of this town proper

notification of the town's recognition and support through this Article of those persons' and/or entities' right to farm.

- B. Where nonagricultural land uses extend into agricultural areas or exist side by side, agricultural operations frequently become the subjects of nuisance complaints due to lack of information about such operations. As a result, agricultural operators are forced to cease or curtail their operations. Such actions discourage investments in farm improvements to the detriment of adjacent agricultural uses and the economic viability of the town's agricultural industry as a whole. It is the purpose and intent of this Article to reduce the loss to the town of its agricultural industry as a whole. It is the purpose and intent of this Article to reduce the loss to the town of its agricultural resources by clarifying the circumstances under which agricultural operations may be considered a nuisance. This Article is not to be construed as in any way modifying or abridging any New York State law or any other applicable provisions of state law relative to nuisances; rather, it is only to be utilized in the interpretation and enforcement of the provisions of this Article.
- C. An additional purpose of this Article is to promote a good neighbor policy by advising purchasers and users of property adjacent to or near agricultural operations of the inherent potential problems associated with such purchase or residence. Such concerns may include, but are not limited to, the noises, odors, dust, chemicals, smoke and hours of operation that may accompany agricultural operations. It is intended that, through mandatory disclosures, purchasers and users will better understand the impact of living near agricultural operations and be prepared to accept attendant conditions as the natural result of living in or near rural areas.

**§ 35-4. Activity not to constitute a nuisance.**

No agricultural activity, operation or facility or appurtenances thereof conducted or maintained in a manner consistent with management practices such as those recommended by state and federal agencies within the educational aspects of farmers and

agricultural practices, herein and after referred to as "accepted customs and standards," shall be or become a nuisance.

**§ 35-5. Disclosure.**

- A. The disclosure statement required by this Article shall be used under the following circumstances and in the following manners: Upon any transfer of real property by sale, exchange, installment land sale contract, lease with an option to purchase, any other option to purchase or ground lease coupled with improvements or residential stock cooperative improvement with dwelling units, the transferor shall require that a statement containing the language set forth in Subsection B shall be signed by the purchaser or lessee and recorded with the county recorder in conjunction with the deed or lease conveying the interest in real property; provided, however, that the real property to be transferred is adjacent to real property upon which agricultural operations are conducted.
- B. The disclosure required by Subsection A is set forth herein, and shall be made on a copy of the following disclosure form:

**REAL ESTATE TRANSFER DISCLOSURE STATEMENT**

THIS DISCLOSURE STATEMENT CONCERNS THE REAL PROPERTY SITUATED IN THE TOWN OF KINGSBURY, STATE OF NEW YORK. THIS STATEMENT IS A DISCLOSURE OF THE CONDITION OF THE ABOVE-DESCRIBED AGRICULTURAL PROPERTY AND MAY APPLY TO THIS ARTICLE I OF CHAPTER 35 OF THE CODE OF THE TOWN OF KINGSBURY AS OF \_\_\_\_\_. IT IS NOT A WARRANTY OF ANY KIND BY THE SELLER(S) OR ANY AGENT(S) REPRESENTING ANY PRINCIPAL(S) IN THIS TRANSACTION, AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THE PRINCIPAL(S) MAY WISH TO OBTAIN.

I

SELLER'S INFORMATION

The seller discloses the following information with the knowledge that even though this is not a warranty, prospective buyers should consider this information in deciding whether and on what terms to purchase the subject property. The seller hereby authorizes any agent(s) representing any principal(s) in this transaction to provide a copy of this statement to any person or entity in connection with any actual or anticipated sale of the property. THE FOLLOWING IS INFORMATION MADE BY THE SELLER(S) AS REQUIRED BY THE TOWN OF KINGSBURY AND ARE NOT THE REPRESENTATIONS OF THE AGENT(S), IF ANY. THIS INFORMATION IS A DISCLOSURE AND IS NOT INTENDED TO BE PART OF ANY CONTRACT BETWEEN THE BUYER AND SELLER.

1. The Town of Kingsbury permits operation of accepted customs and standards for agricultural operations within the town. If the property you are purchasing is located near agricultural lands or operations or included within an agricultural district, you may be subject to inconveniences or discomfort arising from such operations. Such discomfort or inconveniences may include, but are not limited to: noise, odors, fumes, dust, smoke, insects, operation of machinery during any hour of the day or night, storage and disposal of manure and the application, by spraying or otherwise, of chemical fertilizers, soil amendments, herbicides and pesticides. One (1) or more of the inconveniences described may occur as a result of any agricultural operation still within conformance with existing laws and regulations and accepted customs and standards. If you live near an agricultural area, you should be prepared to accept such inconveniences or discomfort as a normal and necessary aspect of living in a town with a strong rural character and an active agricultural sector. The Town of Kingsbury has established a Grievance Committee to assist in the resolution of any disputes which might arise between residents of this town regarding agricultural operations.

2. Additional town requirements.

The seller certifies that the information herein is true and correct to the best of the seller's knowledge as of the date signed by the seller.

Seller \_\_\_\_\_ Date \_\_\_\_\_  
Seller \_\_\_\_\_ Date \_\_\_\_\_

II

BUYER(S) AND SELLER(S) MAY WISH TO OBTAIN PROFESSIONAL ADVICE AND/OR INSPECTIONS OF THE PROPERTY AND TO PROVIDE FOR APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN BUYER AND SELLER(S) WITH RESPECT TO ANY ADVICE/INSPECTIONS/DEFECTS.

I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS STATEMENT.

Seller \_\_\_\_\_ Date \_\_\_\_\_

Seller \_\_\_\_\_ Date \_\_\_\_\_

Buyer \_\_\_\_\_ Date \_\_\_\_\_

Buyer \_\_\_\_\_ Date \_\_\_\_\_

Agent (broker obtaining the seller)

\_\_\_\_\_ By \_\_\_\_\_ Date \_\_\_\_\_

(Associate Licensee or Broker Signature)

Agent (broker obtaining the offer)

\_\_\_\_\_ By \_\_\_\_\_ Date \_\_\_\_\_

(Associate Licensee or Broker Signature)

State of \_\_\_\_\_ On this the \_\_\_\_ day

:ss: of \_\_\_\_\_, before me,

County of \_\_\_\_\_ the undersigned Notary Public, personally appeared

Personally known to me. \_\_\_\_\_ Provided to me on the basis of satisfactory evidence to be the person(s) whose name(s) \_\_\_\_\_ subscribed to the within instrument and acknowledged that \_\_\_\_\_ executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

Present A.P. No. \_\_\_\_\_

A REAL ESTATE BROKER IS QUALIFIED TO ADVISE ON REAL ESTATE. IF YOU DESIRE LEGAL ADVICE, CONSULT YOUR ATTORNEY.

I

SELLER'S INFORMATION

The seller discloses the following information with the knowledge that even though this is not a warranty, prospective buyers should consider this information in deciding whether and on what terms to purchase the subject property. The seller hereby authorizes any agent(s) representing any principal(s) in this transaction to provide a copy of this statement to any person or entity in connection with any actual or anticipated sale of the property. THE FOLLOWING IS INFORMATION MADE BY THE SELLER(S) AS REQUIRED BY THE TOWN OF KINGSBURY AND ARE NOT THE REPRESENTATIONS OF THE AGENT(S), IF ANY. THIS INFORMATION IS A DISCLOSURE AND IS NOT INTENDED TO BE PART OF ANY CONTRACT BETWEEN THE BUYER AND SELLER.

1. The Town of Kingsbury permits operation of accepted customs and standards for agricultural operations within the town. If the property you are purchasing is located near agricultural lands or operations or included within an agricultural district, you may be subject to inconveniences or discomfort arising from such operations. Such discomfort or inconveniences may include, but are not limited to: noise, odors, fumes, dust, smoke, insects, operation of machinery during any hour of the day or night, storage and disposal of manure and the application, by spraying or otherwise, of chemical fertilizers, soil amendments, herbicides and pesticides. One (1) or more of the inconveniences described may occur as a result of any agricultural operation still within conformance with existing laws and regulations and accepted customs and standards. If you live near an agricultural area, you should be prepared to accept such inconveniences or discomfort as a normal and necessary aspect of living in a town with a strong rural character and an active agricultural sector. The Town of Kingsbury has established a Grievance Committee to assist in the resolution of any disputes which might arise between residents of this town regarding agricultural operations.

2. Additional town requirements.

The seller certifies that the information herein is true and correct to the best of the seller's knowledge as of the date signed by the seller.

Seller \_\_\_\_\_ Date \_\_\_\_\_  
Seller \_\_\_\_\_ Date \_\_\_\_\_

**§ 35-6. Refusal to sign disclosure statement.**

If a buyer refuses to sign the disclosure statement set forth in § 35-5B, the transferor may comply with the requirements of this Article by delivering the statement to the buyer as provided in § 35-5B and affixing and signing the following declaration to the statement:

I, \_\_\_\_\_, have delivered a copy of the foregoing disclosure statement as required by law to \_\_\_\_\_ who has refused to sign.

I declare the foregoing to be true.

Date \_\_\_\_\_ Sign \_\_\_\_\_  
Print Name: \_\_\_\_\_

**§ 35-7. Penalties for offenses.**

Noncompliance with any provision of this Article shall not affect title to real property, nor prevent the recording of any document. Any person who violates any provision of this Article is guilty of an infraction punishable by a fine not exceeding one hundred dollars (\$100.).

**§ 35-8. Effect on other provisions.**

This Article and the prescriptions set forth herein are in addition to all other applicable laws, rules and regulations.

**§ 35-9. Resolution of disputes.**

- A. Should any controversy arise regarding any inconveniences or discomfort occasioned by agricultural operations, including but not limited to noises, odors, fumes, dust, the operation of machinery of any kind during any hour of the day or night, the storage and disposal of manure and the application, by spraying or otherwise, of chemical fertilizers, soil amendments, herbicides and pesticides, the parties will submit the controversy to a Grievance Committee as set forth below in an attempt to resolve the matter prior to the filing of any court action.

- B. Any controversy between the parties may be submitted to a Grievance Committee whose decision shall be advisory only, within thirty (30) days of the date of the occurrence of the particular activity giving rise to the controversy or of the date a party became aware of the occurrence.
- C. The Committee shall be composed of five (5) members selected from the community by the Town Board of whom two (2) shall be active farmers, one (1) an agribusinessman, one (1) a Town Board member and one (1) a member-at-large.
- D. The effectiveness of the Grievance Committee as a forum for resolution of disputes is dependent upon full discussion and complete presentation of all pertinent facts concerning the dispute in order to eliminate any misunderstandings. The parties are encouraged to cooperate in the exchange of pertinent information concerning the controversy.
- E. The controversy shall be presented to the committee by written consent of one (1) of the parties within the time specified. Thereafter, the Committee may investigate the facts of the controversy, but must, within thirty (30) days, hold a meeting to consider the merits of the matter and, within twenty (20) days of the meeting, render a written decision to the parties. At the time of the meeting, both parties shall have an opportunity to present what each considers to be pertinent facts.
- F. The decision of the Committee shall not be binding. If one (1) of the parties is not satisfied with the Committee's decision, upon agreement of both parties, the matter may be submitted to the Town Board according to the procedures set forth in Subsection G below.
- G. Town Board procedures.
  - (1) The controversy between the parties shall be submitted to the Town Board upon written agreement of both parties.
  - (2) The Town Board shall review the controversy with a report from the proceedings of the Grievance Committee. Within thirty (30) days of the written request, the Town Board shall render a written decision to the parties.

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§ 35-10. Posting.

"Right to farm" signs will be maintained throughout the town.