

Realization of the American Dream by Foreign Investors: Alien Agricultural Land Ownership in Iowa

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I. INTRODUCTION

The American Dream refers to the opportunities for growth and prosperity that many believe are unique to our country. There are several explanations of what the American Dream is, but it is essentially the “dream of a land in which life [is] better and richer and fuller for everyone, with opportunity for each”¹ Foreign investors have largely been cut out of this dream, particularly in the area of ownership of agricultural land. A total of eight states, all in the Midwestern United States, regulate such ownership.²

In recent years, there has been an increase in foreign investors looking to invest capital in farmland.³ For example, an enormous Chinese corporation was active in the purchase of agricultural land in Missouri. This purchase necessitated a change in Missouri law, allegedly sponsored by said corporation. In a similar move, with very different results, a Swiss banking giant was unsuccessful in its attempt to purchase agricultural land in Wisconsin despite support from the Governor of Wisconsin.⁴ This interest is not one-way. American agricultural land owners are also attracted to selling to international corporations and investors, mainly due to the increasing average age of farmers and the illiquidity of farmland.⁵ Given the rising importance of this issue, this Note reviews methods that foreign corporate investors can use to circumvent or change the current restrictions that are blocking the investments they want to make in Midwestern farmland, which is some of the most valuable land in the world.

Land is extremely important for a number of reasons. Not only is it a finite resource, it is endeared and a source of identity for some; agricultural land owners develop a connection with the land and are shaped by it.⁶ Iowans naturally feel very strongly about agricultural land ownership, and it follows that the state has a very stringent restriction on foreign and corporate ownership.⁷ The rise of value in agricultural land in recent years⁸ and the relative safety of investing in land compared to other ventures makes such investments intriguing to foreign investors. Part II of this Note discusses background information regarding Iowa’s ownership laws and reasons why farmers may be interested in selling to

1. *The American Dream*, LIBRARY OF CONGRESS, <http://www.loc.gov/teachers/classroommaterials/lessons/american-dream/students/thedream.html> (last visited Mar. 29, 2017).

2. Bill Oemichen, *Fight foreign ownership of Wisconsin farmland*, AGRI-VIEW (Jan. 15, 2015), http://www.agriview.com/news/regional/fight-foreign-ownership-of-wisconsin-farmland/article_dfaa69ba-c108-5815-acc0-055c084ef484.html.

3. See, e.g., Barbara Demick, *China looks abroad for greener pastures*, L.A. TIMES (Mar. 29, 2014), <http://www.latimes.com/world/asia/la-fg-china-foreign-farmland-20140329-story.html> (discussing China’s motivation for looking to the United States to invest in farmland); Steve Holt, *Here’s Why Foreign Investors Are Trying to Buy American Farmland*, TAKE PART (Feb. 12, 2014), <http://www.takepart.com/article/2014/02/12/land-grabs-at-home> (stating that “wealthy international investors and corporations are buying up much of America’s usable land at astronomical prices per acre”).

4. See *infra* Part III.D (discussing the successful attempt by Shuanghui International and the unsuccessful attempt by UBS to purchase agricultural land).

5. See *infra* notes 53–55 and accompanying text (outlining the aging of farmers and the decreasing interest in farming among younger people).

6. *The Importance of Land*, SHARING CULTURE, <http://www.sharingculture.info/the-importance-of-land.html> (last visited Mar. 29, 2017).

7. See generally IOWA CODE § 91 (2016) (outlining Iowa’s land ownership laws).

8. See *infra* notes 58–60 and accompanying text (discussing the rise in land values since 1910, specifically within the last 15 years).

foreign investors.⁹ Next, in Part III, I discuss ways foreign investors may acquire interests in agricultural land and still comply with Iowa law.¹⁰ Lastly, in Part IV, I recommend that foreign investors should ultimately advocate for a change in the law as this will be the most beneficial in the long run.¹¹ As discussed below, the language of the statutes indicate that the restrictions on foreign ownership are similar to the restrictions of corporate ownership. A change in the law of foreign ownership may open the door for a change in corporate ownership law in Iowa as well.

II. BACKGROUND

The state of Iowa has placed restrictions on foreign ownership of land since the 19th century, but did not actually begin to strictly enforce these restrictions until the mid-1970s.¹² Current Iowa law generally allows a nonresident alien, foreign business, or foreign government to acquire realty within the state.¹³ Largely, the foreign person or entity may own and alienate said realty, and they incur the same rights and duties regarding ownership as a citizen of the United States.¹⁴ However, Iowa is one of eight states that either directly prohibits or considerably limits the foreign ownership of agricultural land.¹⁵ Iowa forbids nonresident aliens and foreign businesses and governments from acquiring or owning any interest in agricultural land in the state.¹⁶ Agricultural land is defined as “land suitable for use in farming.”¹⁷ It is noteworthy that the Legislature chose the word “suitable”; the land does not even need to be actually used for farming purposes to qualify as agricultural land so long as it is capable of being used as such.¹⁸ Iowa’s ban on foreign ownership is not absolute; there are a number of exceptions to this ban.¹⁹ For example, the restrictions do not apply to land acquired by devise or descent,²⁰ a bona fide encumbrance on the agricultural land taken for security purposes,²¹ or land acquired for research and experimental purposes.²²

9. See *infra* Part II (discussing background information regarding Iowa’s ownership laws and interest farmers may have in selling to foreign investors).

10. See *infra* Part III (discussing how foreign investors can comply with Iowa’s law but still acquire agricultural land interests).

11. See *infra* Part IV (recommending foreign investors should advocate to change the law for their benefit).

12. GENE WUNDERLICH, ECON. RES. SERV., U.S. DEP’T AGRIC., SUMMARY OF THE REPORT: FOREIGN INVESTMENT IN U.S. REAL ESTATE, AGRIC. INFO. BULL. NO. 400 1, 15 (1976).

13. IOWA CODE § 9I.2 (2003).

14. *Id.*

15. Oemichen, *supra* note 2. The other seven states restricting foreign ownership are Minnesota, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota, and Wisconsin. *Id.*

16. *Id.*

17. IOWA CODE § 9I.1(1) (2003). See also *id.* at (2), which defines farming as “the cultivation of land for the production of agricultural crops, . . . raising of poultry, . . . production of eggs, . . . milk, . . . fruit or other horticultural crops, grazing or the production of livestock.” Farming also “includes the production of timber, forest products, nursery products, and sod.” *Id.*

18. See IOWA CODE § 9I.1(1) (defining agricultural land as “land *suitable* for use in farming”) (emphasis added).

19. See *id.* at (3) (describing the exceptions to foreign ownership restrictions).

20. *Id.* at (3)(a); see *infra* Part III.C (discussing this exception in greater detail).

21. IOWA CODE § 9I.3(3)(b).

22. *Id.* at (3)(d).

Iowa also restricts corporate ownership of agricultural land.²³ Iowa law mandates that “[a] corporation, limited liability company, trust, or unincorporated nonprofit association . . . shall not, either directly or indirectly, acquire or otherwise obtain or lease any agricultural land in this state.”²⁴ However, corporations can organize themselves to qualify as authorized corporations, limited liability companies, trusts, and associations that may own agricultural land.²⁵ Before addressing methods that foreign corporate investors can use to get around the restrictions on foreign and corporate ownership of agricultural land, this Part explains the historical evolution of the laws and the policy reasons underlying existing laws.

A. Legislative History of Iowa’s Alien Ownership Laws

Iowa’s law regarding foreign ownership is regarded by some as the strictest in the nation.²⁶ The law changed from a simple restriction on the number of acres non-resident aliens could own to a near-complete ban in the 1970s.²⁷ The foundations of Iowa’s ownership laws are built upon English common law, where the King was the owner of all the land in the country and there was no place for “alien[s] who would have allegiance[s] elsewhere.”²⁸

The sudden enforcement of these restrictions was prompted by the oil crisis of 1973.²⁹ In response to the United States’ involvement in the Yom Kippur War, the Organization of the Petroleum Exporting Companies (OPEC) increased the price of oil per barrel by 300%.³⁰ With this increase in liquidity in the hands of foreign countries and financiers, Iowans were fearful that this money would be invested in Iowa farmland.³¹ Several reasons were suggested as to why foreign investors may choose farmland to invest in at that time, namely to “assur[e] a supply of U.S. food for foreign consumption, learn[] American techniques of food production and marketing, obtain[] the U.S. rates of return on investment which, in the agricultural sector, often exceed those of other countries, [and] profit[] on the capital appreciation of U.S. land”³² Iowa citizens expressed their apprehension about foreign investment, especially the “loss of local control in their

23. See IOWA CODE § 9H (2010) (showing the application of the statute to both domestic and foreign corporations).

24. IOWA CODE § 9H.4(1).

25. See IOWA CODE § 9H.1(3) (laying out requirements for authorized farm corporations); *id.* at (4) (discussing requirements to be considered an authorized limited liability company); *id.* at (5) (stating requirements for authorized trusts); *id.* at (6) (declaring requirements for authorized unincorporated nonprofit associations).

26. Kathleen Masterson, *No need to worry about Chinese buying farmland in Iowa*, HARVEST PUBLIC MEDIA (May 16, 2011).

27. *Id.*; see NEIL E. HARL, U.S. DEP’T OF AGRIC., *Restricting Alien Ownership of Farmland: The Iowa Experience*, in 1 MONITORING FOREIGN OWNERSHIP OF U.S. REAL ESTATE 95, 95 (1997) (discussing the changes in Iowa ownership laws since the 1850s).

28. HARL, *supra* note 27, at 95–96. While the King “owned” all the land in the country, lords were granted use of land in exchange for sworn allegiance to the King and the provision of various goods and services to the King. *Id.*

29. *Id.* at 104.

30. *The price of oil—in context*, CBC NEWS (Apr. 18, 2006), <https://web.archive.org/web/20070609145246/http://www.cbc.ca/news/background/oil/>.

31. HARL, *supra* note 27, at 104.

32. Craig Currie et al., U.S. Dep’t of Commerce, *Foreign Investment in Iowa Farmland*, in 8 FOREIGN DIRECT INVESTMENT IN THE UNITED STATES 29, 30 (1976).

communities, the possible rise of a feudal-like system of non-responsive, absentee landlords, substantial increases in the cost of land, and increased rents paid by tenant operators if large tracts of land become controlled by non-resident aliens.”³³ A large majority of realtors in the state sensed an unfavorable reaction to the possibility of foreign investors acquiring agricultural land in the state, with some suggesting that there were purely racial motives.³⁴ Because of this disapproving local reaction to foreign investment, foreign investors went to great lengths to hide their interest in acquiring farmland.³⁵ Against this backdrop, the Iowa Legislature enacted what is currently embodied in Chapter 9I of the Iowa Code.

Another policy concern during this time was the acquisition of farmland by corporations, which was seen as a threat to “the centerpiece of [the social and economic structure of agriculture], the family farm.”³⁶ These “statutory constraint[s] ha[ve] applied not only to nonresident aliens but also to corporations organized under the laws of a foreign country”³⁷ Large corporate farms are seen as manipulators of the market that “creat[e] an imbalance of power between themselves and the small independent farmers to the point where those farmers have no free access to any market.”³⁸ Restrictions on corporate ownership of agricultural land are found in Chapter 9H of the Iowa Code.

B. Enforcement Process of Alien Land Ownership Laws in Iowa

The attorney general of Iowa is tasked with the enforcement of these restrictions. First, the secretary of state must obtain information that a foreign person or entity holds some form of interest in agricultural land.³⁹ Then, the secretary of state must report the violation to the attorney general.⁴⁰ The attorney general will then commence an action in the district court of the county where the land is located.⁴¹ If the court finds a violation, the land will escheat to the state and be sold in the same manner and following the same procedures as a foreclosure sale.⁴² The proceeds from the sale will be used to pay court costs, and then the remaining balance, if any, will be given to the person divested of the property.⁴³

33. *Id.* at 31.

34. *Id.* at 45; see Angelo Young, *State Laws In US Against Foreign Land Ownership Could Affect How China’s Shuanghui Manages Agricultural Land In Wake Of Smithfield Foods (SFD) Purchase*, INT’L BUS. TIMES (June 10, 2013, 2:13 PM), <http://www.ibtimes.com/state-laws-us-against-foreign-land-ownership-could-affect-how-chinas-shuanghui-manages-agricultural> (discussing how some state laws in the 1970s and 1980s were motivated by Sinophobia).

35. Currie et al., *supra* note 32, at 47.

36. HARL, *supra* note 27, at 104.

37. Neil E. Harl, *The Iowa Reporting Law and Alien Ownership*, in 8 FOREIGN DIRECT INVESTMENT IN THE UNITED STATES 164, 164 (1976).

38. Jennifer M. Vogel, Note, *Iowa Code Chapter 9H.2: The State of Iowa’s Battle Against Corporate Farming*, 30 J. CORP. L. 199, 200 (2004).

39. IOWA CODE § 9I.10(1) (2003). This is a general statement, as there are some parties to whom the restrictions do not apply. IOWA CODE § 9I.2(3).

40. IOWA CODE § 9I.10(1).

41. *Id.* at (2).

42. IOWA CODE § 9I.11.

43. *Id.* The person divested of the property can only recoup the amount they invested in the property. If there are still proceeds remaining after that person recovers their amount paid for the property, the county where the land is located will receive the remainder. *Id.*

C. Other States that Forbid or Limit Foreign Ownership of Land by Law

Seven other states prohibit or significantly limit foreign ownership of agricultural land by law: Minnesota, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota, and Wisconsin.⁴⁴ Minnesota's law is very similar to Iowa's; no alien is allowed to acquire any interest in agricultural land.⁴⁵ Missouri law prohibits "alien[s] or foreign business[es] [from] acquir[ing] . . . land in [Missouri] if the total aggregate alien and foreign ownership of agricultural acreage in [Missouri] exceeds one percent of the total aggregate agricultural acreage in [Missouri]."⁴⁶ Nebraska forbids aliens from owning or leasing any type of land for more than a period of five years, with some exceptions.⁴⁷ In North Dakota, aliens (who are not citizens of Canada or a permanent resident alien) "may not acquire directly or indirectly any interest in agricultural land . . ."⁴⁸ The Oklahoma Constitution forbids alien ownership of all land within the state.⁴⁹ South Dakota forbids alien ownership of agricultural land in excess of 160 acres.⁵⁰ In Wisconsin, aliens who are not residents of the United States may not own, or hold any interest in, more than 640 acres of any type of land.⁵¹ Though the laws of other states are not identical to the law in Iowa, the same basic restrictive principle flows throughout. Many Midwestern legislatures do not want foreign investors buying up agricultural (or in some states any type of) land. Nine states—the same states that limit foreign ownership plus Kansas—prohibit or otherwise limit corporate ownership of agricultural land.⁵²

D. Why Are Farmers Interested in Selling Their Land to Foreign Investors in the First Place?

First, farmers are not spring chickens anymore. A 2012 United States Department of Agriculture (USDA) census found that the average age of principal farm operators is 58.3 years.⁵³ Simultaneously with this advancement in age, "fewer young people are getting into the [farming] business."⁵⁴ The number of beginning farmers—those who have not conducted farming operation for more than ten years—declined 20% from 2007 to 2013.⁵⁵

44. Oemichen, *supra* note 2.

45. MINN. STAT. § 500.221(2) (1977).

46. MO. REV. STAT. § 442.571(1) (2015); *see infra* Part II.D (discussing the prompting of this law when a Chinese investment group acquired Smithfield Foods).

47. NEB. REV. STAT. § 76-402 (1943); *see id.* §§ 76-403–405 (discussing the exceptions to the no alien ownership rule).

48. N.D. CENT. CODE § 47-10.1-02(1) (2016).

49. OKLA. CONST. art. XXII, § 1. This forbiddance of alien ownership of all lands, which is similar to Nebraska's, and not just agricultural land suggests that Oklahoma and Nebraska's restrictions are actually the most severe in the nation. Oklahoma's constraint, like Nebraska's, is not absolute as there is an exception for resident aliens. *See* OKLA. STAT. tit. 60, § 122 (1910) (creating an exception for aliens who take up a bona fide residence in the state, although, once they discontinue their residency, they must alienate the property within five years of the termination of their residency).

50. S.D. CODIFIED LAWS § 43-2A-2 (1979).

51. WIS. STAT. § 710.02 (1983).

52. *Corporate Farming Laws—An Overview*, NAT'L AGRIC. L. CTR., <http://nationalaglawcenter.org/overview/corporatefarminglaws/> (last visited Mar. 29, 2017).

53. U.S. DEP'T OF AGRIC., PRELIMINARY REPORT, 2012 CENSUS OF AGRIC. (2014), http://www.agcensus.usda.gov/Publications/2012/Preliminary_Report/Highlights.pdf.

54. Holt, *supra* note 3.

55. U.S. DEP'T OF AGRIC., *supra* note 53.

This makes it extremely hard for a farmer to turn down a small fortune when it is unlikely the farm will stay in the family.⁵⁶ These older farmers nearing retirement age see the benefits of liquidity, rather than holding on to illiquid assets such as land.⁵⁷

Since 1910, Iowa farmland values have increased on average five percent per year.⁵⁸ This land has experienced a steady increase in value in the last 15 years—jumping from an average price of \$1781 an acre in 1999 to \$7943 in 2014.⁵⁹ This 346% increase in a matter of a few years is even more of an incentive for farmers to sell. This incredible rise has been described as a “golden era” for land values.⁶⁰

III. ANALYSIS

Foreign corporations are not wholly out of luck if they wish to venture into the marketplace of Iowa agricultural land. Despite being “critical to national security” because it is a “means of food production,” agricultural land can possibly be acquired by a foreign investor in compliance with Iowa law as it is currently written while contemplating the intent of the Legislature.⁶¹ This Part will first discuss the types of corporations that foreign investors can use to hold agricultural land, and then examine three prospective avenues for foreign investors to pursue when they are eager to participate in this bull market: (1) compensating the owner of the agricultural land to put the property in a trust and name the foreign investor the beneficiary; (2) compensating the owner of the agricultural land to devise the property to the foreign investor; and (3) advocating for a change in the law. Because of the novelty of the first two possibilities, the effectiveness of these routes is theoretical.⁶² Chinese investors in particular may be attracted to testing the parameters Iowa has in place, as China constitutes 20% of the world’s population, yet only 9% of the world’s arable land is located within its borders.⁶³

A. Corporations that Already Qualify to Own Agricultural Land

Before delving into methods that corporate investors could use to navigate restrictions on foreign ownership of agricultural land, it may be helpful to outline how corporate investors can navigate restrictions on corporate ownership of land. There are two types of corporations that can already own farmland in Iowa: authorized corporate farms and family farm corporations. To qualify as an authorized farm corporation, the entity must have been created for the purpose of farming⁶⁴ and (1) not have more than 25 stockholders,⁶⁵ (2) all

56. Holt, *supra* note 3.

57. *Id.*

58. See Michael D. Duffy, *2014 Farmland Value Survey Iowa State University*, IOWA ST. UNIV. EXTENSION AND OUTREACH (Jan. 2015), <https://www.extension.iastate.edu/agdm/wholefarm/html/c2-70.html> (noting that “farmland values have increased 73 percent of the years, decreased 26 percent of the years, and remained unchanged for [three] years between 1910 and 2014”).

59. *Id.*

60. *Id.*

61. Masterson, *supra* note 26.

62. Notwithstanding extensive research, I have found no instances of foreign investors attempting to pay an owner of agricultural land to set up a trust and name them as beneficiaries or devising the land to them.

63. Demick, *supra* note 3.

64. IOWA CODE § 9H.1(3) (2010).

65. *Id.* at (3)(a).

said stockholders must be natural persons;⁶⁶ and (3) not directly or indirectly own or lease more than 1500 acres of agricultural land.⁶⁷ In order to be considered a family farm corporation, the business organization must (1) be majority owned by persons related to each other or acting in a fiduciary duty to each other;⁶⁸ (2) have natural persons as its sole stockholders;⁶⁹ and (3) earn 60% of its revenues from farming over the last three years.⁷⁰ A foreign corporation can create a subsidiary that meets these two requirements to hold the investment farmland. Then, the foreign corporate investor would only need to contend with restrictions on foreign ownership of agricultural land, which are addressed below.

B. Foreign Investor Compensating the Agricultural Land Owner to Put the Property in a Land Trust and Name the Foreign Investor the Beneficiary

Nonresident aliens, foreign businesses, and foreign governments are forbidden from acquiring “agricultural land or *any interest* in agricultural land in [Iowa].”⁷¹ The fundamental phrase in this section of the Iowa Code, and the starting point of this Part, is “any interest.” There are multiple conceivable interpretations of what the Legislature intended when they selected that precise expression. The Legislature could have meant all interests, incorporating legal, equitable, beneficial, etc., into this proscription. However, this denotation is not consistent with the apprehensions conveyed by Iowa’s citizens in the 1970s.⁷² The concerns expressed all stem from a fear of foreign owners having legal title in the agricultural land.⁷³ Drafters of the legislation were likely aware that any type of trade restriction reduces economic efficiency and raises prices.⁷⁴ In 1868, the Supreme Court discussed the importance of statutory interpretation regarding ambiguous terms and stated “[a]ll laws should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression, or an absurd consequence.”⁷⁵ Balancing the concerns of the electorate, the economic reality of restrictions on trade, and principles of statutory interpretation expounded by the Supreme Court, the Legislature most likely intended to place the least amount of restrictions possible on trade to minimize the detrimental fiscal effects while simultaneously addressing the constituency’s concerns. The denotation “any interest” likely has a connotative meaning of only legal interests because of this balancing. Therefore, it is likely, though far from certain, the Legislature meant foreign investors could not acquire any legal interest in agricultural land, but this restriction did not apply to equitable or beneficial interests such as being beneficiaries of a trust.

66. *Id.* at (3)(b).

67. IOWA CODE § 9H.5(1).

68. IOWA CODE § 9H.1(9)(a).

69. *Id.* at (9)(b).

70. *Id.* at (9)(c).

71. IOWA CODE § 9I.2 (2003) (emphasis added).

72. Currie et al., *supra* note 32, at 30 (discussing Iowa citizens’ fear of absentee landlords and loss of local control of agricultural land in their communities).

73. *Id.*

74. See Crystal R. Lombardo, *Top 10 Pros and Cons of Free Trade*, NLCATP (Jan. 12, 2015), <http://nlcatp.org/top-10-pros-and-cons-of-free-trade/> (stating that free trade provides for lower prices, increased innovation, and competition between companies, all of which benefit consumers).

75. *United States v. Kirby*, 74 U.S. 482, 486 (1868).

Generally speaking, corporations and other types of entities are prohibited from owning or buying agricultural land.⁷⁶ One exception to this broad prohibition unambiguously acknowledged in the statute is authorized trusts: “[a] corporation, limited liability company, trust, or unincorporated nonprofit association, other than [an] . . . authorized trust . . . shall not . . . acquire or otherwise obtain or lease any agricultural land in this state.”⁷⁷ Trusts must meet three qualifications to be considered authorized trusts and deemed eligible to acquire or own interests in agricultural land: (1) there must be no more than 25 beneficiaries;⁷⁸ (2) the beneficiaries must all be natural persons;⁷⁹ and (3) the income generated by the trust must not be exempt from federal or state taxation.⁸⁰

An individual or small group⁸¹ of foreign investors would, in most cases, meet all of these prerequisites. Corporations could not take advantage of this avenue as they fail the second requirement—that all the beneficiaries be natural persons. Although most investment dollars are financed by prodigious, multinational corporations,⁸² foreign individual investors or small groups of investors can still slip through the cracks by utilizing authorized trusts. As a precursor, a downside of this approach is that the foreign investor will not be in control of the land; the foreign investor will just receive economic benefits. The settlor,⁸³ who in this case will also be the owner of the agricultural land, may be enticed by the foreign investors to put the land in the trust and benefit economically.⁸⁴ Trusts are created in a variety of ways in Iowa, most commonly via an inter vivos transfer of the property to a trustee.⁸⁵ The Iowa Trust Code⁸⁶ also prescribes requirements for constructing a valid trust—including the settlor being competent and intending to create a trust,⁸⁷ the same person not serving as sole trustee and sole beneficiary,⁸⁸ the trust designating a definite beneficiary,⁸⁹ and the trustee having responsibilities to execute.⁹⁰ While some may assert that compensating an individual to create a trust and name the payer the beneficiary is contrary to public policy, nothing in the Iowa Code precludes such an arrangement. Consequently, this scenario is a conceivable option for foreign investors seeking to purchase interests in Iowa agricultural land.

76. See IOWA CODE § 9H (2010) (placing restrictions on the ownership of land by entities).

77. IOWA CODE § 9H.4(1).

78. IOWA CODE § 9H.1(5)(a).

79. *Id.* at (5)(b). These individuals also cannot be acting as a trustee or fiduciary of a trust. *Id.*

80. *Id.* at (5)(c).

81. See *id.* at (5)(a) (restricting the number of beneficiaries of an authorized trust to 25).

82. See Christopher Helman, *The 25 Companies Investing The Most In America's Future*, FORBES (Sept. 10, 2014), <http://www.forbes.com/sites/christopherhelman/2014/09/10/the-25-companies-investing-the-most-in-americas-future/> (listing the companies that are investing the largest amounts of money in the United States, including AT&T, Exxon Mobil, Google, General Motors, and Apple). Generally speaking, an automatic response amongst the public is to equate investing with people like Warren Buffett and companies such as Berkshire Hathaway.

83. A settlor is the person who creates the trust and makes all major decisions regarding the trust, including who the beneficiaries are, what property is going in to the trust, who will serve as the trustee, etc.

84. See *supra* Part II.D (discussing reasons why farmers are interested in giving up their agricultural land).

85. IOWA CODE § 633A.2101(1) (2005). Trusts can also be provided for in a decedent's will taking effect at death. *Id.* See *id.* at (2)–(4) (listing the other methods for creating a trust).

86. IOWA CODE § 633A (2005).

87. *Id.* § 633A.2102(1)(a).

88. *Id.* at (1)(b).

89. *Id.* at (1)(c).

90. *Id.* at (1)(d).

C. Foreign Investor Compensating the Owner of the Agricultural Land to Devise the Property to the Investor

Another opportunity the foreign investor may consider is compensating the owner of the agricultural land to provide in their will for the land to go to the foreign investor, which can be either a foreign individual or foreign business. The restrictions of foreign agricultural land ownership set forth in the Iowa Code,⁹¹ as previously mentioned, are not unconditional. The limitations do not apply to a number of different circumstances,⁹² to wit “[a]gricultural land acquired by devise or descent.”⁹³ Agricultural land acquired this way, however, must be divested by the foreign owner within two years from the date of acquiring the interest in the land.⁹⁴

A will is one of the most important and personal documents an individual will ever execute, for it contains “[t]he words a man desires to have read when he lies dumb, the gifts he leaves, the grace with which he gives, all these lay bare the spirit, the heart of disposition as few other things can.”⁹⁵ It is the “expression of the wishes of the testator regarding the work of a life-time”⁹⁶ Analogous to how some may oppose paying the owner to set up a trust for the benefit of the foreign investor,⁹⁷ the same concern may be voiced when a will is involved. Nonetheless, there is nothing (again) in the Iowa Code that prevents such an arrangement from being organized. In Iowa, “any person of full age and sound mind may dispose by will of all the person’s property, except an amount sufficient to pay the debts and charges against the person’s estate.”⁹⁸ Further, “a testator may prescribe the entire manner in which the testator’s estate shall be administered”⁹⁹ In Iowa, all wills must be in writing, signed by the testator, and signed by two competent witnesses.¹⁰⁰ If a testator wishes to be remunerated for the disposal of some of their property in a certain way, they are certainly free to do so. Therefore, a foreign investor could potentially recompense the owner of the agricultural land to devise the land to the investor, but there are some apparent complications with this approach.¹⁰¹

91. See IOWA CODE § 91.3(1) (2003) (describing the restrictions and who these restrictions apply to).

92. *Id.* at (3) (listing the exceptions to the restrictions).

93. *Id.* at (3)(a).

94. *Id.* at (1). This two-year divestment requirement applies to interests acquired by devise or descent after January 1, 1980; land acquired by devise or descent before this date is not required to be divested at any time. *Id.* For purposes of this Note, I will assume that all relevant interests are acquired after January 1, 1980.

95. Virgil M. Harris, *The Importance of the Last Will and Testament*, 25 BANKING L.J. 377, 377 (1908) (quoting Daniel S. Remsen).

96. *Id.* at 378.

97. See *supra* Part III.B (discussing the potentiality of public policy concerns regarding this type of arrangement).

98. IOWA CODE § 633.264 (2006).

99. *Id.* § 633.265. The accompanying text is true so long as the interests of creditors are not adversely affected by the administration of the estate. *Id.*

100. IOWA CODE § 633.279 (2015).

101. Not only would the foreign investor be required to divest himself of all rights and interests in the agricultural land within two years under IOWA CODE § 91.5, but the investor would also have to wait for an indeterminate period of time for the testator to die. The testator could die the very next day after agreeing to the arrangement, or 30 years from that date.

D. Foreign Investor Advocating for a Modification to Contemporary Iowa Law

In other regions of the country, foreign ownership of agricultural land regulations have been altered, or a change has been advocated for, under contentious circumstances.¹⁰² In 2013, Missouri changed its foreign ownership laws to allow foreign investors to acquire agricultural land so long as total foreign ownership does not exceed one percent of the agricultural acreage in the state—with one percent equaling roughly 300,000 acres.¹⁰³ Around the time of this change, Shuanghui International—now known as WH Group Limited—was attempting to purchase Smithfield Foods.¹⁰⁴ A substantial barrier stood in the path of this possible acquisition as Smithfield Foods had considerable operations in Missouri, where a law was in effect that prohibited foreign ownership of agricultural land.¹⁰⁵ Legislators—“led by recipients of Smithfield Foods’ political donations”—pushed through the one percent ceiling law split seconds before the sale was made public.¹⁰⁶ WH Group Limited accordingly lawfully owned 42,000 acres of agricultural land.¹⁰⁷ Farmers and others in the agrarian community of Missouri have expressed trepidations “that even a corporate entity from the other side of the planet can use political money to get what it wants in [Missouri].”¹⁰⁸ While Missouri representatives are maintaining the timing of the adjustment in the law and the acquisition of Smithfield was merely a matter of happenstance, those concerned are finding that assertion hard to believe when taking into account the \$390,000 of political contributions Smithfield has made in recent years.¹⁰⁹ Smithfield has also denied that they were involved in the change in the law; a legislative lobbyist of Smithfield in Missouri stated that they were not cognizant of the “application to its operations until weeks after the session had adjourned.”¹¹⁰

Additionally in 2013, the Wisconsin agricultural community was facing a change in the law of foreign ownership of agricultural land, but this proposed modification was much more drastic than the one enacted in Missouri.¹¹¹ Governor Scott Walker proposed that the

102. See Kevin McDermott, *Is Missouri’s agricultural law being rewritten in Hong Kong?*, ST. LOUIS POST-DISPATCH (May 24, 2015), http://www.stltoday.com/news/local/govt-and-politics/is-missouri-s-agricultural-law-being-rewritten-in-hong-kong/article_f5979f58-b49d-5553-bce5-48e114ac241e.html (highlighting that the change in Missouri’s law was sponsored by legislators who had received political contributions from Smithfield Foods—which desired to sell itself to a Chinese company).

103. MO. REV. STAT. § 442.571(1) (2013); McDermott, *supra* note 102. This amendment did not pass easily. The governor vetoed the bill, but legislators led a successful veto override. *Id.*

104. *Id.*

105. *Id.*

106. *Id.* It seems as this change may have been a prime example of rider legislation, as this language was “quietly [added to] a pending bill.” McDermott, *supra* note 102.

107. *Id.*

108. *Id.*

109. *Id.*

110. *Id.* This statement is hard to believe, however. It is highly unlikely that two exceedingly sophisticated companies would not consider the legal atmosphere of the locality where a part of the acquisition was taking place.

111. See Kara Slaughter, *Proposed changes to Wisconsin’s nonresident alien land ownership law in the Governor’s 2013-2015 Budget*, AGRI-VIEW (Mar. 28, 2013), http://www.agriview.com/news/regional/proposed-changes-to-wisconsin-s-nonresident-alien-land-ownership-law/article_5a4a80ba-97c2-11e2-8251-0019bb2963f4.html (discussing the proposal to change the foreign ownership laws recommended by the top executive official in Wisconsin—Governor Scott Walker); Charles P. Pierce, *The Ongoing State Of The State Of Wisconsin*, ESQUIRE (Apr. 15, 2013), <http://www.esquire.com/news-politics/politics/a22005/scott-walker-bill->

ban on foreign ownership of agricultural land be entirely repealed.¹¹² A spokesperson for Walker stated the change was needed in order to comply with the World Trade Organization's 1995 General Agreement on Trade in Services (GATS).¹¹³ The timing and content of this proposal, similar to the situation in Missouri, seemed to coincide too perfectly with the aspirations of the enormous Swiss banking company UBS.¹¹⁴ UBS wished to purchase close to 10,000 acres of agricultural land in southwest Wisconsin for \$67,500,000.¹¹⁵ Governor Walker's proposed change was not successful, however; the law remains that "aliens not residents of a state of the United States"¹¹⁶ may not acquire more than 640 acres of land (of any type—meaning they can acquire up to 640 acres of even agricultural land) in the state.¹¹⁷

For foreign investors to get the law changed in Iowa, a proposed bill must be sponsored and introduced by a legislator or a committee from either house.¹¹⁸ After the bill passes several stages of revisions, drafts, and editing, the bill is assigned to the regular calendar and debated in the chamber.¹¹⁹ If a constitutional majority (26 in the Senate and 51 in the House of Representatives)¹²⁰ of legislators vote to pass the bill, the bill journeys to the other chamber, where a majority must pass the bill as well.¹²¹ The bill is then sent to the Governor—currently Terry Branstad¹²²—who has three options: (1) sign the bill; (2) veto the bill; or (3) do nothing.¹²³ If the Governor signs the bill, or the veto is overridden by two-thirds of the members of each chamber, the bill becomes a law.¹²⁴

selling-off-wisconsin-041513/ (conferring the timing of this proposed change by Walker was motivated by a Swiss bank's interest in "the bull market for farmland").

112. Slaughter, *supra* note 111. Walker did not propose that the State's corporate ownership laws be changed, however.

113. *Id.* This statement must be taken with a grain of salt; there is no evidence of a convincing legal challenge to the statute as is, so "the stated rationale of needing the law change in order to comply with [a] federal treaty does not withstand scrutiny." *Id.*

114. Pierce, *supra* note 111.

115. *Id.* To help quantify the vastness of this purchase, 10,000 acres equals approximately 16 square miles of land.

116. WIS. STAT. § 710.02(1)(a) (1983).

117. *Id.* §710.02(1)(a)(1).

118. *How A Bill Becomes A Law*, LEGIS. SERVS. AGENCY (Feb. 15, 2017), <https://www.legis.iowa.gov/docs/publications/LP/696315.pdf>.

119. *Id.*

120. As of January 2017, Republicans control the Iowa House 59 to 41. *Legislators*, IOWA LEGISLATURE, <https://www.legis.iowa.gov/legislators/house> (last visited Mar. 29, 2017). The Senate is controlled by the Republican Party 29 to 20, with one Independent. *Iowa State Senate*, BALLOTPEdia, http://ballotpedia.org/Iowa_State_Senate#Partisan_composition (last visited Mar. 29, 2017). One could assume that Republicans, who generally dominate the rural areas of Iowa, will oppose this initiative more than their urban Democratic counterparts. *Legislature maps symbolize Iowa's rural-urban split*, IOWA HIGHWAY ENDS (ETC.) (Jan. 15, 2015, 10:07 AM), <http://iowahighwayends.net/blog/2015/01/legislature-maps-symbolize-iowas-rural-urban-split/>.

121. LEGIS. SERVS. AGENCY, *supra* note 118. Amendments to the bill are also added via a constitutional majority. *Id.*

122. Branstad is a Republican, which might raise the possibility that he would veto any bill removing the restriction because of the probable GOP opposition to this initiative. With Branstad's recent appointment as the U.S. Ambassador to China, it is likely that his successor Kim Reynolds, Lieutenant Governor of Iowa and Republican Party member, would also be opposed to such a bill.

123. LEGIS. SERVS. AGENCY, *supra* note 118.

124. *Id.* The bill can also become a law, or fail to become a law, depending on the circumstances, but this is not of vital importance to this Note. *Id.*

This process is the obstacle that foreign investors must overcome for the laws regarding foreign ownership of agricultural land in Iowa to be changed.¹²⁵ While some foreign investors have had success in neighboring Midwestern states getting the laws changed,¹²⁶ the long history of animosity towards foreign investors and corporate ownership in Iowa makes this challenge all the more difficult.

IV. RECOMMENDATION

To reiterate, potential options for foreign investors interested in entering the Iowa agricultural land market include (1) compensating the owner of the agricultural land to put the land in a trust and name the foreign investor the beneficiary; (2) compensating the owner of the land to devise the land to the foreign investor; and (3) advocating for a change in the law.¹²⁷ While all of the options are plausible, this Note contends that the best route for foreign investors is to support a change in the law.¹²⁸ This course is arguably the most challenging, will necessitate the greatest expenditure of capital, and will take the lengthiest amount of time before foreign investors see any type of return on their investment. However, advocating for a modification to current law will eventually lead to heightened long-term benefits compared to the other routes. Once the law is changed, if it is ever changed, and whether the change is minimal or sweeping, foreign investors could truly experience and participate in a fraction of the American Dream: owning (agricultural) land.

There are complications inherent in the other two approaches discussed above: compensating the owner to place the land in a trust and naming the foreign investor the beneficiary¹²⁹ or compensating the owner to devise the land to the foreign investor.¹³⁰ Beginning with the establishment of a trust route, this route is completely unavailable to corporate investors because of Iowa Code Section 9H.1(5)(b), which requires that all of the beneficiaries of the trust to be natural persons.¹³¹ Individual foreign investors and small groups of foreign investors do not have to fret about this requirement.

Furthermore, unlike the other options, the foreign investor will not experience and benefit from the legal interests of ownership of agricultural land. Being named a beneficiary under a trust allows the foreign investor to enjoy the economic benefits, such as receiving rental revenue from the property, but the trustee will have the ultimate say when it comes to major decisions involving the property, such as who to rent to, when and if the property should be sold, whether to convert the property to a different type of farming or other use, and so on. The trustee retains all legal ownership and control of the agricultural

125. For indicative purposes, in the United States Congress only four percent of bills became law from 2007 to 2009. Sunlight Foundation, *Only Four Percent Of Bills Become Law*, HUFFINGTON POST (Sept. 25, 2009, 5:12 AM), http://www.huffingtonpost.com/wires/2009/08/25/the-vast-majority-of-bill_ws_268630.html (last updated May 25, 2011).

126. Notwithstanding this phenomena, foreign investors seem to deny involvement in these movements across the board.

127. *See supra* Part III (discussing the potential options foreign investors may pursue in accordance with Iowa law).

128. *See supra* Part III.D (explaining the intricacies of this avenue).

129. *See supra* Part III.B (describing the trust route in greater detail).

130. *See supra* Part III.C (describing the will option in greater detail).

131. IOWA CODE § 9H.1(5)(b) (2003).

land. Trustees are under a fiduciary duty to act for the utmost benefit of the beneficiaries,¹³² but this does not mean the foreign investor and trustee will always have the same ideas regarding the property. Foreign investors are most likely predominantly concerned with recouping their investment in the land, but they will presumably be perturbed with the fact that they will not be able to dictate all aspects of what happens to the property.

Moreover, an arrangement such as this may leave a bad taste in the mouths of judges and the general population. When figuring the total cost, the foreign investor should account for significant litigation expenses.¹³³ Even though this is an unsettled area of law, a lawsuit may be a cheaper option to settling this debate than legislative reform. Given the novelty of this type of arrangement, the fact that it is an end run around the regulation and may be seen as exploitation of a loophole, and the general animosity towards foreign ownership of agricultural land in this state, chances are promising that someone is going to notify the secretary of state of a potential violation of Iowa Code Section 91.2.¹³⁴

Problems are also abundant if a foreign investor were to compensate the owner of the land to devise it in favor of the investor. It should be noted that, contrasting the trust route, a foreign corporation could utilize this route if they desired.¹³⁵ The first, and most obvious, problem is that the foreign investor would have to wait until the owner of the land passed away for the land to pass to them. With the average age of farmers (who are the most likely owners of agricultural land) being approximately 58.3 years,¹³⁶ and the average life expectancy of individuals in the United States equaling 78.8 years,¹³⁷ the average foreign investor, based on these norms, will be waiting 20 and a half years before they acquire the land. A lot can happen while a score of years passes, including changes in the law, destruction of the property, the foreign investor, or investors, passing away, and so on.

The foreign investor is also required by Iowa law to divest itself of all right to and interests in agricultural property acquired by devise within two years of attainment.¹³⁸ Although land traditionally rises in value each year,¹³⁹ foreign investors would be unwise to wait 20 and a half years to be able to own agricultural land for a maximum period of two years. It is entirely conceivable that the foreign investor could wait until the owner died, acquire the land, and subsequently, in that two-year period of ownership, the value of land could radically decrease. The foreign investor would then be required to sell their interest in the land, and could take a massive loss (not only of money, but a massive waste of time

132. See D. Gordon Smith, *The Critical Resource Theory of Fiduciary Duty*, 55 VAND. L. REV. 1399, 1406–07 (2002) (describing this duty as “refrain[ing] from self-interested behavior that constitutes a wrong to the beneficiary as a result of the [trustee] exercising discretion with respect to the beneficiary’s critical resources”).

133. When discussing this idea—i.e., compensating the owner to put the land in a trust—with Dr. Neil E. Harl, he stated that he believed foreign investors would be effectively “buying a lawsuit” along with their beneficiary status. Telephone Interview with Dr. Neil E. Harl, Professor, Iowa State University (Sept. 24, 2015). Dr. Harl is a professor in agriculture and economics at Iowa State University. Dr. Harl obtained a J.D. from the University of Iowa in 1961 and a Ph.D. in economics from Iowa State in 1965.

134. See *supra* Part II.B (specifying the enforcement of Iowa’s agricultural ownership laws).

135. When discussing compensating the owner to devise the land, foreign investor includes foreign corporations along with individual and small groups of investors.

136. See U.S. DEP’T OF AGRIC., *supra* note 53 and accompanying text (discussing the aging of farmers as a group).

137. *Health Status*, ORG. ECON. COOPERATION & DEV. (2013), <https://data.oecd.org/healthstat/life-expectancy-at-birth.htm> (last visited Mar. 29, 2017).

138. IOWA CODE § 91.5 (2003).

139. See *supra* notes 58–60 and accompanying text (remarking that farmland values increase in 73% of years).

as well). Expending a substantial amount of capital now, then having to wait until the owner of the land dies—on average approximately 20 years—for a miniscule period of ownership in which the value of the land could diminish, seems considerably risky for a relatively insufficient chance of realizing considerable returns.

The same policy concerns that permeate the trust route are also noteworthy in the context of wills. Unlike the trust route, the exception to the general prohibition of alien ownership is specifically provided for in the statute.¹⁴⁰ The potential of a legal challenge to this arrangement—compensating the owner to devise the land to the foreign investor—is still relatively high. It is very likely that some of the relatives, heirs, and descendants of the owner will be very disappointed when they find out the farmland is not going to pass to them, but rather to a foreign investor. While the laws of Iowa do not prohibit this type of agreement,¹⁴¹ a foreign investor would be prudent to factor into their budget a reasonable amount for some legal expenditures linked to its defense.

The best approach for foreign investors (businesses, small groups, and individuals) who wish to invest in agricultural land, in my opinion, is to advocate for and suggest a modification to Iowa's ownership laws.¹⁴² This is not the easiest, quickest, or cheapest method; rather, it is the one that will be the hardest, take the greatest amount of time, and will very likely be the most expensive. This route will be harder than the other approaches because, rather than exploiting a loophole in the law or utilizing an express exception, foreign investors will bring this issue right into the center of public debate. Given the history of apprehension and aversion to foreign investment in Iowa by its Legislature and citizens,¹⁴³ foreign investors can expect a robust pushback to this movement. Changing the law would also be a long and complicated process. This is because legislatures “[do] not act as an efficient, homogenous unit, but as two bodies often in conflict with one another.”¹⁴⁴ This topic is sure to brood acrimonious disagreement between members of both the House and Senate, slowing down the progression of getting the law changed even more. The law will unquestionably be required to go through numerous stages of revision, fine-tuning, and rewording before a constitutional majority in both chambers elects to pass it. Lastly, a significant amount of capital would be necessary. A legislator must first sponsor and propose a bill for it to be considered.¹⁴⁵ The easiest way to grab the attention of a legislator is to donate money to their campaign efforts.¹⁴⁶ While a donation up front may get one foot in the door, sustaining this movement notwithstanding pushback from

140. IOWA CODE § 91.3(3)(a).

141. *See supra* Part III.C (discussing relevant provisions of the Iowa Code regarding the valid creation of a will).

142. While Smithfield has generally denied any involvement in the change of the law in Missouri, it is improbable that foreign investors hopeful for a change in the law in Iowa will be able to sit back and be as fortuitous as Smithfield (although I still find Smithfield's claims they had no involvement to be highly suspect). *See supra* Part III.D (questioning the timing of the change in the law and the acquisition of Smithfield was simply a matter of happenstance).

143. *See supra* Part II.A (detailing the legislative history of Iowa's alien ownership laws and the opinions of the general public regarding such investment).

144. *The Legislative Process*, CTR. ON CONG. IND. UNIV., <http://centeroncongress.org/legislative-process> (last visited Mar. 29, 2017).

145. *See supra* notes 118–24 and accompanying text (discussing the procedure for creating a law in Iowa).

146. *See generally* Joshua L. Kalla & David E. Broockman, *Campaign Contributions Facilitate Access to Congressional Officials: A Randomized Field Experiment*, 60 AM. J. POL. SCI. 545 (2015) (observing that parties who donate to political campaigns are granted significantly greater access to the legislator/donee).

fellow legislators and constituents will require additional contributions. The ceiling on the requisite amount of funds necessary to change the law is indeterminable, but it will certainly be expensive.

Despite all these hurdles, changing the law would ultimately benefit foreign investors the most. If the law is changed slightly¹⁴⁷ or drastically,¹⁴⁸ foreign investors could capitalize on agricultural investments to a much higher extent than compensating the owner to put the land in a trust or devise the land to them. Foreign investors would hypothetically enjoy all the legal and beneficial rights of owning the land, could dispose of the property however they see fit, could utilize the property however they see fit, and so on. The other options only provide limited opportunities for foreign investors and are built upon a rickety foundation. Therefore, although it is arguably the most challenging, foreign investors' best plan of attack for their long-term interests would be to advocate for a change in the law.

V. CONCLUSION

The road ahead of foreign corporate investors wishing to access the agricultural land market in Iowa is tough, but not insurmountable. Iowa and its citizens have long been wary of foreign ownership of agricultural land, along with several other Midwestern states. The benefits of foreign investment are numerous. Many corporations see farmland as a solid investment, worth the effort of complying with complicated restrictions. Foreign investment in agricultural land would also inject surplus capital into the market, potentially provide access to different markets for farm products, and encourage competition so the land is in the hands of the person, group, or corporation that values it the most.¹⁴⁹ Farmers may also be more willing to sell to foreign investors because foreign investors will likely pay the most money, farmers are getting older, and fewer young people are coming back to work on the family farm.

Against this backdrop, I have discussed three possibilities for foreign corporate investors to pursue—compensating the owner to put the land in a trust and name the foreign investor a beneficiary, compensating the owner to devise the land to the foreign investor, and advocating for a change in the law. I believe the best route for foreign investors would be to advocate for an amendment to Iowa's ownership laws. Once the law is changed, foreign investors can finally and undeniably own agricultural land: a realization of their own sliver of the American Dream.

147. *See supra* note 103 and accompanying text (discussing Missouri's allowance of foreign ownership of agricultural land so long as total foreign ownership does not exceed one percent of the agricultural acreage in Missouri).

148. *See supra* notes 111–12 and accompanying text (addressing the proposal of Wisconsin's governor to completely repeal the alien ownership laws).

149. *The benefits of foreign investment*, AUSTL. GOV'T, DEP'T FOREIGN AFF. & TRADE, <http://dfat.gov.au/trade/topics/investment/Pages/the-benefits-of-foreign-investment.aspx> (last visited Mar. 29, 2017).