

FACT SHEET



Title: ACQUIRING FEE TITLE ON AGRICULTURAL PATENTS, CONTRACTS, AND AGRICULTURAL HOMESTEADS

Division of Mining, Land and Water/Agriculture • Feb 2015

Beginning August 5, 1997, a new law went into effect for state agricultural land sales: Chapter 20, SLA 1997 (originally know as "SB 109"). Before that date, patents or deeds issued by the state for agricultural land were limited to the agricultural interests only, commonly called "ag rights." The state kept the remaining interests in the land. Under Chapter 20, SLA 1997, the current owner of such land can acquire the remaining interests in the land estate, although the land will still be subject to agricultural covenants. If you own agricultural land obtained from the state and decide you want these remaining interests, the following will apply:

- As landowner, you will keep the original conveyance document (patent or deed).
- The State of Alaska will convey to you its remaining ownership interests in the land estate, giving you a new conveyance document that adds to your original patent or deed.
- The State of Alaska will release the existing agricultural covenants and replace them with the covenants set out under Chapter 20, SLA 1997.
- If you subdivide your parcel, the subdivided parcels include the right to construct housing, although you must first pay the state for this right in most cases.

How does Chapter 20, SLA 1997 affect my existing agricultural patent? Agricultural patents issued prior to August 5, 1997, included the agricultural interests only. Chapter 20, SLA 1997 allows the owner to obtain the remaining interests in the land estate in fee title, subject to a perpetual covenant running with the land that restricts or limits use of the land to agricultural purposes. The interests are also subject a perpetual covenant for the benefit of all Alaska residents and running with the land permitting the owner of land that had been obtained by purchase to subdivide and convey not more than four parcels of the land of not less than 40 acres each, subject to the restriction that a subdivided parcel may not be further subdivided.

If I have an existing agricultural patent, am I required to apply for patent in fee title? No. Chapter 20, SLA 1997 gives you an option, not a requirement, to acquire the remaining interests in the land estate in fee title, subject to agricultural covenants.

Does "the remaining interests in the land estate in fee title" mean I still will not have the mineral rights? That's correct; the state will continue to hold the mineral rights. Also, if your parcel was subject to public access easements, utility easements, and the like, Chapter 20, SLA 1997 does not change that situation.

What are the advantages of converting my existing patent under Chapter 20, SLA 1997? A patent for the remaining interests in fee title under Chapter 20, SLA 1997, may give better security for loans from the U.S. Department of Agriculture and commercial banks. It also

allows agricultural landowners who subdivide their land into smaller farm parcels to offer those parcels complete with the right to construct housing.

I'm still making payments on my state agricultural contract. How does this bill affect me? After you satisfy the terms of your contract (by paying off the balance, fulfilling all applicable development requirements, etc.), your deed from the state will automatically include the remaining interests in the land estate in fee title, subject to agricultural covenants.

Does this new bill apply to everybody who owns an ag-rights parcel, even if they're not the original owner? Yes. If you or a previous owner received a patent from the State of Alaska for agricultural land sold between August 15, 1976 and August 5, 1997, Chapter 20, SLA 1997 entitles you to receive the remaining interests in the land estate in fee title, subject to agricultural covenants.

How do I apply for the remaining interests in the land estate, subject to agricultural covenants? There are two steps. First, go to the title insurance company of your choice and ask for the following documents:

- a "limited liability report with chain of title" affirming your ownership of the parcel, and
- a copy of the original recorded patent or deed issued by the State of Alaska. (If the patent has not been recorded, you need to make sure that gets done; see details below. Also, if your title company cannot supply you with a copy of the original recorded state patent or deed, see below.)

Please note that the title company will charge you a fee for these documents and may require that all ownership documents be recorded.

Then, after you have obtained the documents listed above, complete a Department of Natural Resources form called "Application to Acquire Additional Interests in the Land Estate, Subject to an Agricultural Covenant, and Affidavit of Ownership." Bring or mail the title documents as well as the completed affidavit/application form to one of the department offices listed below. A nonrefundable \$100 processing fee and the appropriate¹ recording fees must accompany your application.

The original patent has not been recorded or can't be found. What should I do? If you have the original patent or deed issued by the State of Alaska, record it at the recording office for the district in which the land is located. Call your local recording office for information on how to get your document recorded. The recorder's office will charge you a fee for recording the document. If you don't have the original state patent or deed and the original was never recorded, contact one of the department offices listed below and ask for a certified copy (\$5 fee). You can then mail or hand-carry the certified copy to the appropriate recording office for recording, as explained above. If the original patent or deed was recorded earlier but you don't have a copy, you can get one from the appropriate recording office. The recorder's office will charge you for the copy.

How long will it take to process my application? Once all the necessary documents and the fee have been received, your application will take about four to six months to process.

¹ Based on the number of pages to be recorded.

How does SB 109 affect my ability to subdivide my agricultural parcel? Both the old "ag rights" law and the new law allow subdivision under certain conditions. Land deeded under the previous law can be subdivided into any number of parcels, so long as each parcel is at least 40 acres in size. But unless the original farm was a homestead or the subdivided parcels are very large (640 acres minimum), no improvements can be constructed on the newly created subdivided parcels. This restriction limits their resale value. Under Chapter 20, SLA 1997, the subdivision rules are different. A landowner who obtains a patent or deed to the remaining rights can subdivide only once, into a maximum of four parcels at least 40 acres in size. No further subdivision of the parcels will be allowed under the law, and the parcels continue to be subject to the agricultural covenants. Each parcel that results from subdivision will automatically include the right to construct landowner housing and farm improvements. However, to exercise this right you will be required to pay the state (or have a lien placed on the parcel) for the right to construct housing on each parcel to be created. Therefore, each subdivided parcel will include the right to construct landowner housing, increasing its value, but this is a right for which the state must be paid. Bear in mind that if your agricultural parcel is in a borough, subdividing it into smaller farms with extra housing rights may raise your local tax bill. Also, some boroughs may require larger parcel sizes for subdivisions or set other restrictions, so be sure to check with your borough platting authority.

I bought my parcel from someone who subdivided it under the old law. It didn't come with any improvement rights. Is there any way I can get the right to build my house there? Yes. After you get the additional patent or deed under Chapter 20, SLA 1997, you could subdivide your parcel. As part of the subdivision process, you would buy the right to construct housing on as many as four subdivided parcels (see below) including one you could keep for yourself. However, the new law is not intended to make you subdivide your farm if all you really want is the right to construct your own house. Therefore, when you apply for the remaining rights under Chapter 20, SLA 1997, you can also buy house-construction rights for your intact parcel. You will be charged the same fee that a subdivider would pay to obtain the right to construct housing on one of the newly created parcels. Simply obtaining the right to construct housing will not be counted as a subdivision as long as your parcel remains intact.

Is there a fee for subdividing my agricultural parcel after I obtain the remaining rights under Chapter 20, SLA 1997? Generally, yes. If you want to obtain the right to construct housing on your original or subdivided parcel, you must pay the State of Alaska \$6,057 (current price in 2015 dollars – adjusted annually) for the right to construct housing on each original or subdivided parcel, regardless of whether you presently have plans to build housing. (The legislature set a \$4000 price for parcels subdivided in 1997, but required that the price be adjusted annually for inflation.) For example, if you subdivide your farm into four parcels, you would pay the State a total of \$18,171 for house-building rights on the three newly created parcels, assuming you already had the right to construct improvements on your original parcel. Alternatively, you can have an appraisal done, at your own expense, to determine the price you will pay for the housing rights; this type of appraisal is mandatory before subdivision of specific agricultural parcels at Point MacKenzie. The appraiser must be approved by the Department of Natural Resources, must contact the department before beginning work, and must submit the appraisal report to the department for approval.

There are exceptions:

- If each subdivided parcel is at least 640 acres, there is no payment to the State of Alaska.
- If the subdivided parcel is conveyed to a member of the immediate family, the payment is delayed until the parcel is conveyed outside of the immediate family. There will be a lien on the parcel until the payment is made. Your immediate family consists of your spouse and your parent, child (including your stepchild or adoptive child), or sibling (your brother or sister), if your parent, child, or sibling lives with you, depends on you financially, or shares a substantial financial interest with you.
- If the original parcel was obtained under the State's homestead program, Chapter 20, SLA 1997 does not require any payment to the State for subdividing. (All homestead patents issued before July 1, 1997, had a clause preventing subdivision for five or ten years. As of 2007 these clauses all have expired and the option to pay to have this clause removed under Chapter 91, SLA 1997 is no longer applicable.) You can obtain a fact sheet on HB 109 from any Department of Natural Resources public information center.

Where can I get more information? Contact one of the following Department of Natural Resources offices. At the Anchorage Public Information Center (PIC), business hours are from 10:00 a.m. to 5:00 p.m. Center staff can be reached during these hours by calling 907-269-8400, then dialing "0". If you would like to leave a message for the Anchorage PIC, dial "9". Or you may continue to listen for instructions on how to access our recorded information lines.

Public Information Center
550 W 7th Ave, Suite 1260
Anchorage, AK 99501-3557
Phone: 907-269-8400
TDD: 269-2259
Fax: 907-269-8901

Public Information Center
Northern Regional Office
3700 Airport Way
Fairbanks, AK 99709-4699
Phone: 907-451-2705
Fax: 907-451-2751

Public Information Center
Southeast Regional Office
P.O. Box 111020
400 Willoughby Ave., Suite 400
Juneau, AK 99801
Phone: 907-465-3400
Fax: 907-586-2954

Division of Agriculture
1800 Glenn Highway, Suite 12
Palmer, AK 99645-0949
Phone: 907-745-7200 Fax: 907-745-7112