

# Memo

To: Egg & Pullet Farmers  
From: Carolynne Griffith, Chair & Harry Pelissero, General Manager  
Date: January 5, 2011  
Re: Egg Farmers of Ontario's Policies, Programs & Procedures Binder

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Egg Farmers of Ontario's staff and solicitor amalgamated EFO's Policies, Programs, Procedures, and pertinent forms into one regulatory binder, for the convenience of all Ontario egg and pullet farmers.

These policies are in effect and remain in effect until EFO determines otherwise. Board-approved changes to a Policy or Procedure will be forwarded to farmers for insertion into this binder.

New Policies and Procedures will be announced in EFO's newsletter 'the Cackler' and updated on EFO's farmer website [[getcracking.ca/farmers](http://getcracking.ca/farmers)] as they come into effect.

Policies, Procedures & Documents posted on the EFO's farmer website contain the most up-to-date versions and should be used for all policy interpretation and quota transactions – please check this site frequently.

If further information or clarification on any matter is required, farmers should contact their Director and/or EFO's Board office.





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# Egg Farmers of Ontario Policies, Programs & Procedures 2011

*(Please visit [www.getcracking.ca/farmers](http://www.getcracking.ca/farmers)  
for updates to Egg Farmers of Ontario Policies contained herein.)*

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# Egg Farmers of Ontario Policies, Programs & Procedures 2011

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# **Egg Farmers of Ontario Policies, Programs & Procedures 2011**

## **SECTION 1: Introduction**



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## Foreword

EFO has prepared these guidelines for the convenience of all Ontario egg and pullet farmers. For full details, reference should be made to the applicable Acts, Regulations & Policies.

These policies are in effect and remain in effect until EFO determines otherwise. Board-approved changes to a Policy or Procedure will be forwarded to farmers for insertion into this binder.

New Policies and Procedures will be announced in EFO's newsletter 'the Cackler' and updated on EFO's farmer website [[getcracking.ca/farmers](http://getcracking.ca/farmers)] as they come into effect.

Policies, Procedures & Documents posted on the EFO's farmer website contain the most up-to-date versions and should be used for all policy interpretation and quota transactions – please check this site frequently.

If further information or clarification on any matter is required, farmers should contact their Director and/or EFO's Board office.

### *Provincial & Federal Laws & Regulations*

EFO derives its authority from the Farm Products Marketing Act, the Commodity Boards & Marketing Agencies Act, and EFO has delegated federal authority under the Agricultural Products Marketing Act and the Farm Products Agencies Act.

All provincial laws and regulations can be found online at [www.e-laws.gov.on.ca](http://www.e-laws.gov.on.ca)



## Quota Transactions

### Introduction by Rob Wilson, Wilson Spurr LLP

As egg farmers, your quota is a critically important and valuable asset. I have been asked to highlight some legal issues that may arise on quota transactions.

It has always amazed me that transactions of this significance are often done very informally without any of the normal legal safeguards that are put in place in commercial transactions. With so much money at stake, a properly drafted agreement can provide a level of protection that would not exist in a casual agreement. It is not the Board's role to advise any of you on your personal financial and business dealings. However, your Board of Directors felt it would be worthwhile for me to share with you, some of the key points that should be covered in such an agreement.

Planning for a quota transfer should start well in advance of the signing of any documents, the giving of any commitments or the payment of any deposits. You need to understand the financial, tax, estate and family business planning issues that may be involved.

You need to look at:

- (i) how to structure the deal for tax reasons;
- (ii) how to finance the deal;
- (iii) how to ensure Board approval will be forthcoming;
- (iv) how to ensure the deal closes;
- (v) how to protect against defaults;
- (vi) how to protect yourself against liability for unpaid licence fees, levies or outstanding encumbrancers.

The standard agreement of purchase and sale documents that are used by most real estate boards in Ontario are quite good and, with proper schedules covering specific quota and related business matters, should be satisfactory where the farm is also being transferred along with the quota.

The purpose of these remarks is not to give legal advice. That you should be getting from your own lawyer before you sign any documents or agree to any terms or pay any money. You will also need tax and accounting advice. I usually find working together with a client's realtor or agent; accountant or tax advisor can identify issues and find solutions.

There may be real tax savings and valuable estate planning measures that can be put in place as part of such a transaction. That has nothing to do with Egg Farmers of Ontario. The Board is not in a position to give advice on quota sales, nor can the Board become involved in any quota transfer disputes.

The most important function of a properly worded contract is to insure that the buyer and seller both get what they bargained for. The second most important function of such a contract is to provide legal remedies in the event of a default or a dispute.

From the buyer's perspective, it is very important that any deposit paid be properly documented, and safely held in a solicitors or realtors trust account. Deposits can be made refundable or non-refundable.



If a seller willfully defaults on a transaction and it does not close, the deposit should be returned to the buyer. The buyer may also have a claim for damages or may seek specific performance of the contract to transfer the quota. These legal processes can take considerable time and be expensive.

On the other hand, if the buyer willfully defaults, the deposit, if large enough, may be sufficient to satisfy any claim the seller may have for damages. If there is no deposit or if it is too small or if the contract does not specify how the deposit is to be applied in such cases, legal action will be required.

In addition to income tax considerations, there may be Family Law Act issues that should be considered. We have community of property in Ontario and spouses have certain rights that may need to be looked after.

Where a quota holder dies, there are also estate considerations. Consider whether quota should be covered by a secondary Will, which would also include private company shares. These assets can then be transferred from an estate without probate of the Will. Avoiding probate avoids the obligation of the estate to pay the Ontario Estate Administration Tax. This tax is in addition to any capital gains or other taxes that may be payable. Unlike capital gains tax, there is no exemption for a spousal roll over. It is a \$15,000 per million in assets tax. For example, on a 22,000 unit quota at \$150 per unit, totaling \$3.3 million, the tax would be \$49,500.00! A short visit to your lawyer to implement such a plan could save your family almost \$50,000.00 in an estate settlement.

Proper identification of the parties to the transaction is critically important. Where the quota holder is incorporated it is important to establish that the corporation exists and that its proper name is being used. The names of the officers and the directors as well as the shareholders need to be disclosed for Board approval purposes.

Typically a corporation selling assets should give certain representations and warranties as to its corporate status. Those include:

- (a) that the corporation is duly incorporated validly existing in good standing;
- (b) that it has the corporate power and authority and holds all the necessary permits and other authorizations needed to hold quota and conduct its egg production operation and to perform its obligations under the quota transfer agreement;
- (c) that it has duly authorized, executed and delivered the quota transfer agreement;
- (d) that the agreement and other related agreements referred to in it constitute binding obligations of the seller;
- (e) that the entering of the agreement does not and will not conflict with any statute or law, the articles or by-laws, or the shareholders agreements of the seller, or any other agreement to which the seller is a party, or which binds the seller, or any judgment or other order or security that binds it or its assets;
- (f) that no proceedings have been taken by the seller or to its knowledge, by any other person with respect to its insolvency, bankruptcy or winding up.

In addition to these reps and warranties, where the registered premises are included, the normal reps and warranties in a commercial land sale agreement would also be required.

From the seller's point of view it is also important to get the proper identity of the buyer, particularly if the full purchase price is not paid on closing.



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If there is any side or related agreements between the buyer and seller, they should be referred to in the agreement, although they do not necessarily need to be made part of it.

It is also important to recognize that as far as Egg Farmers of Ontario is concerned, changes to the make up of a corporation or partnership constitute a transfer of quota. Such changes, as well as the addition or deletion of family members, can have tax implications. Be sure to get proper legal and tax advice before making any such changes or you may find yourself with a bill for capital gains tax.

The more information you can put together before such a visit, the better. Do your homework.

A checklist, that you may wish to use in preparation for your visit to your lawyer and your accountant, follow this introduction. Sample clauses, which may or may not be appropriate to your particular transaction but should be considered in consultation with your legal advisors, follow this introduction.



## Quota Transfer Checklist

1. Copy of deed/transfer.
2. Be sure the name of the owner on the deed transfer is exactly the same as on the quota.
3. Complete a declaration of ownership form 3-09 (Corporation or Family) with EFO.
4. If a corporation, get a copy of the Articles of Incorporation showing the corporate name.
5. If a partnership with a business name, get a copy of the business name registration of the partnership.
6. List any encumbrancers including name, address, account reference number so that payout and release statements can be obtained from each.
7. Obtain encumbrancer consents in form 4-09.
8. Identify and disclose to the Buyer any outstanding licence fees, levies, interest or other monies owing to EFO or EFC.
9. Make arrangements for payment above either prior to or as part of the quota transaction.
10. Be sure that each of the Seller and Buyer have a Pullet Order Report on file with the Board.
11. Identify any suspected or actual violations of any regulation, policy, order or direction of EFO or EFC. This would include any quality standards, on farm food safety or housing density issues. Attempt to resolve with EFO otherwise disclose to Buyer.
12. The Buyer should identify any interest that the Seller may retain in the quota.
13. The Buyer should provide evidence that the Buyer will have the care and management of the egg production facility.
14. Arrange to see a lawyer and take all of this information to this meeting.
15. Instruct your lawyer to prepare the legal opinion required by EFO confirming;
  - (i) the parties to the transaction
  - (ii) details of any partners or shareholders of the seller
  - (iii) names of any encumbrancers on title to the registered premises
  - (iv) confirmation of the registration of the deed/transfer in favour of the buyer.In order to give such an opinion, your lawyer will have to conduct certain searches and obtain clearances where it is necessary. Therefore, do not leave your lawyer visit to the last minute.
16. If you have received an offer to purchase your farm and quota or quota alone, take that document to your lawyer before you sign it or make your contract conditional upon your lawyer's approval.
17. Arrange with your lawyer to negotiate any changes to the offer and secure any deposit in the lawyers trust account if no realtor is involved.
18. If selling your farm, consider an allocation of the purchase price among the different classes of assets, such as;
  - (a) land
  - (b) building
  - (c) depreciable property
  - (d) quota
  - (e) capital property
  - (f) good will and intangibles
19. Confirm HST registration and certification. Be sure the agreement contains a clause respecting HST and whether or not HST is in addition to the agreed upon purchase price.
20. The transaction should be subject to EFO approval, conditional upon the truth and accuracy of all reps and warranties of the Seller and the delivery of the purchase price on closing.



## Quota Transactions Sample Clauses

### **HST:**

If this transaction is subject to Harmonized Sales Tax (HST), then such tax shall be in addition to the Purchase Price. The Seller will not collect HST if the Buyer provides to the Seller a warranty that the Buyer is registered under the Excise Tax Act (“ETA”), together with a copy of the Buyer’s ETA registration, a warranty that the Buyer shall self-assess and remit the HST payable and file the prescribed form and shall indemnify the Seller in respect of any HST payable. The foregoing warranties shall not merge but shall survive the completion of the transaction. If this transaction is not subject to HST, Seller agrees to certify on or before closing, that the transaction is not subject to HST.

### **ACCESS TO RECORDS AND CONFIDENTIALITY:**

After signing this agreement, the Seller shall afford the Buyer and the Buyer’s professional advisors, access to the books and records of the Seller related to the quota; each of the Seller and the Buyer and their respective advisors shall keep confidential the terms of this agreement and the books and records of the Seller. This agreement of confidentiality shall remain binding whether or not this transaction closes.

### **DEPOSIT CLAUSE:**

A deposit in the amount of \_\_\_\_\_ (\$ \_\_\_\_\_) dollars on account of the purchase price has been made by the Buyer by depositing that amount in the trust account with the Buyer’s solicitor, \_\_\_\_\_, who shall not permit such monies to be released from trust without the approval of the Seller’s solicitor, \_\_\_\_\_, the interest payable on the deposit belongs to the Buyer. If the Buyer fails to complete this transaction by reason of non-fulfillment by the Seller of any of the conditions to closing, the Seller is not entitled to the deposit and it shall be released to the Buyer not later than 1 day after the scheduled closing date. If the Buyer fails to complete this transaction for any other reason, the deposit may be retained by the Seller as liquidated damages and shall be obtained by the Seller by making their requisite demand upon the Seller’s solicitors and the Buyer’s solicitors.

### **ADJUSTMENT OF PURCHASE PRICE ON QUOTA SALES:**

The amount of any outstanding licence fees, levies, interest or any other monies owing to either EFO or EFC by the Seller, if they remain unsatisfied at the scheduled closing date, may be adjusted in favour of the Buyer who shall pay same from the proceeds otherwise payable as part of the purchase price.

### **JOINT APPLICATION TO EFO:**

The Seller and Buyer shall co-operate fully with each other and with EFO in the quota transfer approval process and each authorize EFO to release any information respecting the quota to Buyer or Seller.