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Family Law Issues in Agriculture: Orders of Protection

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An Order of Protection is available for parties who are being stalked, harassed, or abused by their partner (physically, verbally, or sexually). It is available not only for romantic relationships (e.g., spouse, boyfriend/girlfriend), but also other family relationships (e.g., between a farmer landlord uncle and farmer tenant niece). Although the procedures for filing and defending against an order of protection vary from state to state, this Fact Sheet breaks down the general process.

Step 1: Filing the Petition

The filing procedures themselves differ from state to state, so it is important to work with an attorney licensed in that jurisdiction. Litigants are encouraged to have a timeline prepared of all applicable events, including supporting documentation (e.g., text messages) to file along with the Petition.

Some localities have domestic violence organizations that will help victims file petitions by leading them through the process. Many states have self-help centers to help those without attorneys file a petition against their abuser.

The name of the petition itself can vary from state to state. In some states, the Petition is a Petition for an Order of Protection and in other states this may be called a Family Offense Petition. Typically, there is both a Petitioner and Respondent, but your state may refer to the parties as a Plaintiff and Defendant. If there is an ongoing divorce action, this matter may be consolidated into the matrimonial case for judicial economy.

Step 2: Seeking Emergency Relief (If Applicable)

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Usually, but not always, the second step is for the litigant to seek emergency relief from the court. This is referred to as an Emergency or Temporary Order of Protection and is usually for a few weeks or up to 30 days, until the initial court appearance.

This proceeding is typically *ex parte* (i.e., without the presence of the other side). Testimony is not usually taken at this court date; as a general rule, the determination of whether to grant the emergency order is done on the paper. The claimant should be in court in case the judge has questions. The Respondent/Defendant is then personally served by the police with the Emergency/Temporary Order of Protection, along with the underlying Petition.

Step 3: Hearing on Petition for Order of Protection

There may be a series of court dates, but eventually a hearing date is set. This is an evidentiary hearing with both direct and cross examination. One can bring exhibits and supporting evidence. Depending on the time allotted by the court, cooperating witnesses may appear and testify.

Depending on the state, an Order of Protection may be granted for a period less than five (5) years. This order usually includes a “stay away” of a certain radius (usually 500’) and a no contact order. Ancillary relief may also be sought, such as restitution. The court has discretion to other relief, such as anger management courses, exclusive occupancy, support issues (e.g., spousal support or payment of household expenses) or children issues (e.g., parenting time, support). Depending on the jurisdiction, attorneys’ fees may be sought. Please note that there can be carve-outs for exchange of children or communication about the children only.

Step 4: Ensuring Compliance with Petition

At the end of the day, an Order of Protection is just a piece of paper. The onus is on the Petitioner/Plaintiff to enforce its provisions. If the Respondent/Defendant has violated the terms of the Order of Protection, then the police should be contacted immediately. Persons who have obtained an Order of Protection should always keep a copy of it on their person (e.g., in their purse) but also at their home and place of employment. Loved ones should be notified of the Order of Protection and, if appropriate, also have a copy of the Order of Protection.

Step 5: Considerations of Extensions

Depending on the state, an extension of the Order of Protection may be sought for good cause shown, such as violations of the Order of Protection or continued threats. This area of law varies significantly from state to state and with certain localities, so please seek a family lawyer nearby for information.

Final Considerations

Both parties to an Order of Protection should seek counsel to help them maneuver the process. Filing

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parties should consider safety when filing an Order of Protection, especially if that person lives with the alleged abuser. Persons defending against Orders of Protection should understand the inherent seriousness of the matter and potential impacts on employment in agriculture if an Order of Protection is issued against them. Terms of Orders of Protections, including emergency/ interim/ temporary orders, should be strictly followed by both Parties.

For more information:

Cari B. Rincker et al., ONWARD AND UPWARD: GUIDE FOR GETTING THROUGH NEW YORK DIVORCE AND FAMILY LAW ISSUES (2015) available at <https://www.amazon.com/Onward-Upward-Getting-Through-Divorce/dp/0692556540>

Cari B. Rincker, “I’m Talking About the Big D and I Don’t Mean Dallas” (May 2019), available at <https://www.slideshare.net/rinckerlaw/im-talking-about-the-big-d-family-law-issues-in-agriculture>

American Academy of Matrimonial Lawyers, Online Book store, available at <https://aaml.org/store/ListProducts.aspx?catid=704530>

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