AGRICULTURAL LAW UPDATE

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I. Iowa Agricultural Law Update

a. Case Law

i. General Liability

1. *Vreeman v. Jansma et. al.*, 995 N.W.2d 305 (Iowa Ct. App. 2023). Iowa Court of Appeals held that helping a neighbor get a downed heifer back on its feet is not a "domesticated animal activity" under Iowa Code § 673.1(3) and therefore § 673.2 does not provide liability immunity for the owner of the heifer.
2. *Singh v. McDermott*, No. 22-1337, 2023 WL 4103449 (Iowa Ct. App. June 21, 2023). Semi-truck collided with a standing cow in the interstate. District Court determined the driver failed to prove the livestock owner breached duty of care. The Court of Appeals affirmed.
3. *Myers v. Linkenmeyer*, 992 N.W.2d 882, 2023 WL 2395966 (Iowa Ct. App. 2023). Iowa Court of Appeals affirmed the dismissal of a lawsuit because the landowner was required to request farm mediation before filing the lawsuit.
4. *Staley v. Barz*, 991 N.W.2d 537, 2023 WL 382983 (Iowa Ct. App. 2023). Iowa Court of

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- Thank you to Kristine Tidgren and Kitt Tovar at the Iowa State University Center for Agricultural Law and Taxation for permission to include portions of their summaries of cases in this outline. For a complete listing of the cases and summaries of agricultural related court decisions and other agricultural law resources in Iowa, see the Iowa State University Center for Agricultural Law and Taxation website: http://www.calt.iastate.edu/.

Appeals reversed holding Plaintiffs were entitled to damages stemming from a replevin action of farm equipment.

ii. Contract Interpretation
   1. *RCB Porkers 4, LLC v. Jerry Seuntjens*, No. 23-0677 (Iowa Ct. App. filed April 26, 2023). A manure application agreement stated the cost of application is "…an amount equal to 65% of the commercial fertilizer rate at First Cooperative Association…" The dispute arose because Seuntjens asserts the price is 65% of the price FCA provides him personally, not the commercial rate published. On Mar. 28, 2023, the Iowa District Court found the term "commercial fertilizer rate" clearly refers to the published price of commercial fertilizer at FCA giving effect to the language of the whole contract to not render any parts of the contract superfluous. This case is currently on appeal.

iii. Drainage
   1. *Thill v. Mangers*, 990 N.W.2d 816, 2022 WL 17826925 (Iowa Ct. App. 2022). The Court of Appeals found the water flow prior to the self-help techniques determined the appropriate burdens between the parcels.

iv. Entity Issues
   1. *Matter of Est. of Johnson*, 992 N.W.2d 878, 2023 WL 2395859 (Iowa Ct. App. 2023). Court of Appeals affirmed the division of a farm partnership's alleged assets and liabilities after the death of one of the business partners.
   2. *Hora v. Hora*, 991 N.W.2d 785, 2023 WL 1809035 (Iowa Ct. App. 2023). By paying personal expenses using business accounts and allowing his son, the operational manager, to misappropriate corn, the Father engaged in self-dealing. The Son also breached his duty of loyalty to the corporation. The Court found that this did not rise to the level of fraud.

v. Estate Issues
   1. *Matter of Est. of Glaser*, 995 N.W.2d 820 (Iowa Ct. App. 2023). Iowa Department of Revenue sought (IDOR) to set aside decedent's predeath transfers of real estate to his friend. The Court of Appeals found that the properties could be sold to satisfy IDOR's claim.
   2. *Matter of Tr. of R.J. Wenck Tr. Under Last Will/Testament of Wenck*, 994 N.W.2d 478m 2023 WL 2671867 (Iowa Ct. App. 2023). Court affirmed probate court's decision that the attorney's fees are not administration costs and must be paid from the principal to not unfairly disadvantage the income beneficiaries.
   3. *U.S. Bank, Nat'l Ass'n v. Bittner*, 986 N.W.2d 840 (Iowa 2023), *reh'g denied* (Apr. 7, 2023). Iowa Supreme Court ruled that the IRA beneficiary designation controls over the language of a will.
   4. *Matter of Est. of Halter*, 989 N.W.2d 807, 2022 WL 16634391 (Iowa Ct. App. 2022). A Niece, serving as her Aunt's fiduciary, added herself to her Aunt's bank account raising the presumption of undue influence. She failed to refuse this because she did not show she acted in good faith or that her aunt acted voluntarily.
   5. *Randall L. Durschmidt Revocable Tr. v. Durschmidt*, 989 N.W.2d 207, 2022 WL 5074672 (Iowa Ct. App. 2022). A beneficiary asserted trustees exerted undue influence over her father. The beneficiary only provide "suspicion and surmise," and the court determined this was not enough to establish the claim.

vi. Lien Issues
   1. *Quality Plus Feeds, Inc. v. Compeer Fin., FLCA*, 984 N.W.2d 437 (Iowa 2023). In interpreting the "superpriority lien" for agricultural feed dealers under Iowa Code Chapter 570A, the Iowa Supreme Court held:
      a. The necessary evidence for tracing dairy cow and milk sales for the feed lien on summary judgment was not "mathematical precision" but must be sufficient for a reasonable fact finder to concluded that the difference between the acquisition price and market or sale price exceeds the amount of the feed dealer's lien.
      b. A feed supplier can perfect an agricultural dealer supply lien after a bankruptcy petition

has been filed without violating the automatic stay.

See page 24 for a detailed discussion of Ag Supply Dealer Liens, Chapter 570A.

vii. Real Property

1. *Witting v. Schinstock-McConnell*, No. 22-1301, 2023 WL 5092210 (Iowa Ct. App. Aug. 9, 2023). The parties treated a fence as a boundary for over ten years. Although the fence was torn down, it was still clearly marked from farming activities. Iowa Court of Appeals affirmed a boundary by acquiescence was established between a farm and neighboring homeowner.
2. *Pitz v. U.S. Cellular Operating Co. of Dubuque*, 989 N.W.2d 636 (Iowa 2023). Iowa Supreme Court affirmed a lessee could exercise their renewal option under the rental contract by only giving written notice even though a later paragraph stated the rental payment was due when the renewal option was exercised. The court found that the renewal option paragraph made the renal payment a term of performance, not a condition precedent.
3. *Sundance Land Co., LLC v. Remmark*, 992 N.W.2d 888, 2023 WL 2396553 (Iowa App. 2023). The Court of Appeals affirmed holding that a previous party's simultaneous ownership of both parcels did not extinguish the boundary by acquiescence.
4. *Lensing v. Lundtvedt*, 992 N.W.2d 886, 2023 WL 2396537 (Iowa App. 2023). Court of Appeals affirmed order of specific performance for the sale of farm property finding the seller did not abandon his claim. The court also affirmed the denial of buyer's breach of contract claim because there was insufficient evidence that buyer was ready to perform.
5. *Grout as Tr. of Helen Schardein 2018 Revocable Tr. v. Sickels*, 985 N.W.2d 144 (Iowa 2023). Iowa Supreme Court found that a joint tenancy with rights of survivorship was converted to a tenancy in common when one of the owners transferred her undivided interest to a revocable living trust.
6. *Bruhn Farms Jt. Venture v. Kuehl*, 989 N.W.2d 207, 2022 WL 5078275 (Iowa App. 2022). Relying on Iowa Code § 651.31. A farmer claimed he would experience "great prejudice" if he was not awarded both farms. However, the court only considers these factors when weighing whether the presumption of a partition in kind is equitable. The Court of Appeals affirmed the division of two properties between a farmer and his two sisters.
7. *Community 1st Credit Union v. Hart*, 989 N.W.2d 798 (Iowa App. 2022). The Court held the debtor did not suffer prejudice because a deed was not recording in a timely manner and the farm sale should not be set aside for failure to record the deed within the statutory period.
8. *Eldridge v. Turner*, 990 N.W.2d 812 (Iowa App. 2022). Court found insufficient proof that a long-standing fence was a known boundary line in a definition location.

viii. Tax

1. *Story Cnty. Wind, LLC v. Story Cnty. Bd. of Rev.*, 990 N.W.2d 282 (Iowa 2023). A wind energy company began replacing a substantial portion of the wind plant's parts and claimed this "repowering" restarted the graduated tax valuation under Iowa Code § 427B.25. The Iowa Supreme Court affirmed that the repowering work did not alter the property tax valuation because the entire wind plant was not replaced or added.

b. <u>Legislation</u>

i. Rural Emergency Hospitals. Senate File (SF) 75. Authorizes the state licensing of rural hospitals that meet federal guidelines for enhanced Medicare payments.

ii. Livestock Health Council. SF 473. Clarified the purpose of the council is to support research of livestock diseases and make recommendations to ISU. Council will include one turkey producer.

iii. Veterinary Medicine. House File (HF) 670. Expanded the definition of veterinary medicine and set different levels of supervision of veterinary auxiliary personnel.

iv. Taking Nuisance Animals. HF 317. Allows an owner or tenant of agricultural property outside the corporate limits of a city to capture or kill a coyote, raccoon, opossum, skunk or groundhog on the property if the owner or tenant deems the animal to be a nuisance without permission.

v. Innovative Butchery Eligibility. House File (HF) 185. Requires a business to employ less than 75

full time, nonseasonal individuals to be eligible to apply for butchery innovation and revitalization program. Effective 07/01/2023.

vi. Restricted Farm CDLs. HF335. This bill replaces the state regulations with the federal rules for a restricted CDL.

vii. Utilities. HF 599. Makes an electric public utility with fewer than 10,000 customers and electric co-ops subject to IUB regulatory action for public utility railroad crossings, but not for pilot projects.

viii. Statewide Farmers Markets. HF 661. Provides for a statewide license for a temporary food establishment for a fee of $200 per year.

ix. Weights and Measures. HF 666. Changes terminology, allowed scale ticket adjustment to account for moisture in grain, allowed retention of delivered grin in open storage without receipt or purchase, proves money set aside for water quality agriculture infrastructure, and reinstated the grain Indemnity Fund assessment.

x. Merchant Line Approval. HF 714. Requires that proposed above-ground merchant lines using eminent domain must be approved by the IUB within 3 years of the submission of the petition and if not, the IUB must reject the petition

xi. Raw Milk. SF 315. Allows the sale of raw milk and raw milk products by raw milk dairies. Milk must be sold within 7 days after production. Cannot be resold, sold at farmers markets, or by a home food processor.

xii. Vehicle Weight Limits. SF 359. Allows any violation of weight limit to be charged by citation regardless as to whether the fine would exceed $1,000 and regardless as to whether the charge is admitted.

xiii. Chinese Investments. SF 418. Amends Iowa Code chapters 12F and 12H regarding Sudan and Iran related investments to require that public funds review their list of scrutinized companies annually instead of quarterly. Adds a new Chapter 12K regarding investment of public funds in companies owned by Chinese government or military.

xiv. Real Estate Transfer Tax. HF 111. No transfer tax on real estate transfers to trust beneficiaries.

c. <u>Regulations</u>

i. Governor's Executive Order 10

- Signed by the Governor on 1/10/23
- Impacts most state agencies
- Established moratorium on all new Admin Rules effective 2/1/23
- Requires a "red tape" review, rescinding and readopting administrative rules
- Goal is to reduce regulatory burden
- Process includes 2 public hearings
- 4-year process with a schedule
- 2023 Rule Review schedule:
    - Livestock rules ch. 65
    - Board of Veterinary Medicine
    - DNR Ag lease program
    - Deer hunting rules
    - Property tax assessment appeals
    - Sales tax
- 2024 Schedule:
    - Water quality rules
    - Wells
    - Wastewater & NPDES permits
    - Septic systems

- Flood plains
- Egg, turkey, sheep and wool, livestock health advisory council

ii. Iowa Department of Natural Resources

1. Animal Feeding Operation Rule
   - 8/12/22, DNR emailed and posted on their website notice of proposed informal AFO rulemaking
   - 11/21/23, Environmental Protection Commission voted to submit proposed rule for Notice of Intended Action
     - Written comments due Feb. 23, 2024
     - Two public hearings
       - Feb. 14, 2024, 1:30-3:30, Wallace Bldg., Des Moines
       - Feb. 19, 2024, via Zoom, link provided upon request to afo@dnr.iowa.gov by 9:00 on Feb. 19
   - Primarily non-substantive restructuring and rewording
   - Major Changes:
     - Added a general division which applies to all operations
     - Some references to Iowa Code taken out
     - Eliminates the director discretion/ department evaluation rule
     - Remove appendices from the rule; available on DNR website only as rule reference documents
     - Flood plain determinations
       - Use of DNR siting atlas instead of alluvial soils and declaratory orders
       - The map is the rule
       - 5 counties with draft maps - not finalized FEMA flood plain maps (Black Hawk, Johnson, Louisa, Winneshiek, Woodbury)
     - Construction requirements for Karst terrain
       - NOIA – current Karst construction rule with exception of requiring soil corings to 15 feet below the bottom of the proposed structure or into bedrock, whichever is shallower
       - Previous DNR drafts included reduced Karst separation distance to bedrock
     - Master matrix – county enrollment
       - Resolutions adopting the master matrix remain in effect until rescinded by the county board of supervisors. The enrollment period for original resolution remains January 1 – January 31.
2. Other DNR AFO Rule Issues
   - Manure management plan – annual updates due dates
   - DNR rule 65.16(3):
     - (b) Submit updated MMP to DNR and county annually by hard copy or electronically showing any changes
     - (b)(3) DNR is to stagger the due dates & "notify each confinement feeding operation owner of the date on which the updated MMP is due."
     - DNR enforcement actions and penalties for repeated failure (3 consecutive yrs.) to submit by due date
       - Review previous years Notices of Violations for specific language for potential defense to enforcement action and penalty
   - Effective Date of DNR Rules – make sure proper rule is being enforced by DNR
   - Environmental Self Audits - Iowa Code Chapter 455K

- Initiated by business owner to determine environmental compliance
- Benefits:
  - Immunity from penalties if a violation discovered during audit and promptly reported to DNR, before DNR investigates
  - Confidentiality of audit report

- No immunity from penalties if:
  - DNR not properly notified
  - Violations are intentional or result in injury to persons, property or environment
  - Substantial economic benefit giving violator a clear economic advantage over competitors

iii. Iowa Department of Agriculture and Land Stewardship

1. On June 1, 2023, the Governor signed HF670 into law amending Iowa Code § 169. This law expands the definition of the practice of veterinary medicine to include anytime compensation is received for any of the following:

   (1) Providing a diagnosis, treatment, or correction, or providing for the prevention of a disease, defect, injury, deformity, pain, or condition of an animal.

   (2) Prescribing, dispensing, administering, or ordering the administration of a drug, including a medicine or a biologic; prescribing or attaching a medical appliance; or providing an application or treatment of whatever nature for the prevention, cure, or relief of a disease, ailment, defect, injury, deformity, pain, or other condition of an animal.

   (3) Performing any of the following:

   (a) A surgical operation in which an animal is diagnosed or receives treatment.

   (b) Complementary or alternative therapy in which an animal receives treatment.

   (4)Doing any of the following:

   (a) Certifying the health, fitness, or soundness of an animal.

   (b) Performing any procedure for the diagnosis of pregnancy, sterility, or infertility on an animal.

   Sets three different levels for licensed vet supervision, but states that a licensed vet will not be deemed a supervising vet until he/she has observed the animal and then determined the level of supervision required.

   To implement these changes, the Iowa Board of Veterinary Medicine reviewed draft language to Iowa Administrative Code 811 on November 30, 2023.

II. Federal Agricultural Law Update

a. Case Law

i. Ag Trespass and Nuisance

1. *Barden v. Murphy Brown LLC*, 2023 WL 5282376 (E.D.N.C. Aug. 16, 2023). Plaintiffs claimed Defendants' farming activities caused files, dust, and manure to come onto their properties but filed to provide evidence of any detectable substance or that the Defendants were the cause. District Court granted Defendants' Motion for Summary Judgment.
2. *Bay v. Anadarko E&P Onshore LLC*, 73 F.4th 1207 (10th Cir. 2023). Farmers who own surface rights above an oil and gas deposit sued the mineral rights owners for trespass. The Court found that although the Plaintiffs use the land for an agricultural purpose, Plaintiffs failed to prove a material interference.
3. *In re Paraquat Products Liab. Litig.*, No. 3004, 2023 WL 3948249 (S.D. Ill. June 12, 2023). Defendants of lawsuits alleging that paraquat exposure led to Parkinson's disease brought a Motion to Dismiss the public nuisance claim. The Court granted the Motion in the trial selection case and deferred ruling on the public nuisance claims with regard to other Plaintiffs.
4. *Animal League Def. Fund v. Peco Foods, Inc.*, 2023 WL 2743238 (E.D. Ark. Mar. 31, 2023).

The Court granted Defendant's Motion to Dismiss for Failure to State a Claim concluding that the First Amendment applied to state action, not private actors.

ii. Bankruptcy
1. *In re Topp*, 75 F.4th 959 (8th Cir. 2023). The Eighth Circuit determined the final rate for the repayment play matters, not which risk-free rate is used as a starting point. Court considered how Farm Credit was over secured and the overall risk of default.

iii. Antitrust
1. *In re Cattle and Beef Antitrust Litig.*, 2023 WL 5310905 (D. Minn. Aug. 17, 2023). Plaintiffs sold their cattle to the four largest meat packing companies and alleged they conspired to suppress the price of fed cattle. The Plaintiff claimed violations of the Sherman Act and the Packers and Stockyards Act. The Court granted the Motion to Dismiss because the Plaintiff could not show they were a direct target of the anticompetitive activity nor that their injury was traceable to the Defendants.

iv. Employment Law
1. *Porter v. T.J. Crowder and Sons*, LLC, 2023 WL 4899551 (D. Colo. July 31, 2023). Employees at a fertilizer company sued their employer for failure to pay their overtime wages. Agricultural employment exception under the Fair Labor Standards Act (FLSA) applied and the motion for summary judgment was denied.

v. Farm Finance
1. *Karl v. U.S.*, 2023 WL 4762827 (W.D. Wis. July 26, 2023). The FSA lender did not owe a fiduciary duty to the borrowers because the borrower did not have any physical or mental impairments.
2. *Miller v. U.S. Dep't of Agric.* No. 22-1209 (6th Cir. Jan. 3, 2023). Farmer argued he was not required to repay overpaid claims do to "poor recordkeeping." The 6th Circuit found policy provisions requiring repayment for overpaid claims and that insurers have a duty to correct errors.

vi. Real Property
1. *Ideker Farms, Inc. v. U.S.*, 71 F.4th 964 (Fed. Cir. 2023). Court of Appeals affirmed that the intermittent flooding caused by the U.S. Army Corps' restoration of the Missouri River constituted a per se taking of farmland. The Court also found the lost crops were not a consequential damage of the taking, but a separate compensable property interest.

vii. Tax
1. *Murfam Enterprises LLC v. Commr. of Internal Revenue*, T.C.M. (RIA) 2023-073 (Tax 2023). The Taxpayer donated a parcel of land to a trust for conservation purposed and then claimed a charitable deduction. The Court determined the value of the easement by taking the value of the hog confinement plus the stipulated value of the remaining acreage and then subtracted the stipulated value of the land after the donation.

viii. Water
1. *In re Cattle and Beef Antitrust Litig.*, 2023 WL 5310905 (D. Minn. Aug. 17, 2023). In applying the major questions doctrine, the Plaintiff failed to show clear congressional authorization for the EPA to regulate bycatch under § 3111.
2. *Sackett v. Envtl. Protec. Agency*, 598 U.S. 651 (2023). The Supreme Court significantly narrowed the definition of "waters of the United States." The Court repealed the "significant nexus" test and declared adjacent wetlands must have a "continuous surface connection."

b. <u>Regulations</u>

i. Clean Water Act
1. In response to *Sackett v. Envtl. Protec. Agency*, on September 8, 2023, the EPA and Army Corps of Engineers published a Revised Definition of "waters of the United States" removing the "significant nexus" standard.

ii. CAFO Clean Water Act Regulations
- 2017 Petition for Rulemaking

- Settled lawsuit with Activists in April 2023
- EPA responded to their petition on August 15, 2023
- EPA agreed to do the following:
    - Appoint an **Animal Agriculture Water Quality Advisory Committee** as a subcommittee of the Farm, Ranch & Rural Communities Advisory Com.
        - Nominations are due January 2, 2024
        - Committee's Charge is to "conduct a comprehensive evaluation of the CAFO program to consider the most effective and efficient ways to reduce pollutants generated by CAFOs."
    - Comprehensive evaluation of areas for improvement in the regulatory program including effluent limits
        - Detailed study of CAFO discharges to Waters of the U.S.
        - Information on new technology and practices
        - Economic study of the industry

iii. CAFO Air Consent Decree from 2005

- 60-day & 120-day deadlines
- NH3, H_2S, PM and VOCs
- Air emissions estimating methodologies
    - Swine barns & lagoons, broilers, egg-layers, dairy barns & lagoons, and VOCs
    - Updated methodologies
    - Scientific review underway
- Public comment likely in the future

iv. USDA Natural Resources Conservation Service 590 Standard

- Iowa NRCS adopted a new 590 practice standard for nutrient management in April 2023
- Moves most content to Guidance Document
    - Applies to EQIP projects and planning
    - Requires the use of the Corn Nitrogen Rate Calculator with a fixed price ratio of 0.05
        - Economic model for highest economic rate of return using commercial fertilizer – no manure data included
    - Prohibits use of Iowa MMP for nutrient planning
    - Prohibits manure application in the fall until soils are below 50 degrees and cooling
    - Guidance can change without public notice & comment
    - State appropriation to update the model and develop more robust set of data points

III. State Law Animal Housing Legislation & Litigation

a. California Prop. 12 and 2.

In 2008, California passed Proposition 2, a ballot initiative that imposed confinement requirements on California pork producers. Cal. Health & Safety Code § 25990(a). Proposition 2 prohibited California pork producers from confining breeding sows in a manner that does not allow them to turn around freely, lie down, stand up, or fully extend their limbs (the "Turn Around Provision"). Cal. Health & Safety Code § 25991(e)(1). Proposition 2 gave California producers until January 1, 2015, to comply with these confinement requirements. Cal. Health & Safety Code § 25990. These Turn Around Provisions also applied to California calves raised for veal and to egg-laying hens. Cal. Health & Safety Code § 25991(f).

Out-of-state pork producers were not initially subject to these requirements. Cal. Health & Safety Code § 25990(a). To rectify this ostensible disadvantage to California producers, the Legislature enacted Assembly Bill 1437 ("AB1437"), to impose certain confinement requirements for egg-laying hens on out-

of-state producers as well. Id. AB1437 did not apply to calves raised for veal or to breeding sows.

After AB1437 passed, Proposition 12 was submitted to the California voters as a ballot initiative in 2018. See California Department of Food and Agriculture, Proposition 12 Implementation, https://www.cdfa.ca.gov/ahfss/Prop12.html ("CDFA Proposition 12 Implementation"). Proposition 12 subjected out-of-state pork and veal producers to the Turn Around Provisions.
California voters approved Proposition 12 on November 6, 2018. Cal. Health & Safety Code §§ 25990-25994. Proposition 12 amended the California Health and Safety Code Section 25990 (which had been enacted through the passage of Proposition 2) to prohibit the sale of any whole pork meat which the business owner knows or should know is the meat of a breeding pig, or the immediate offspring of a breeding pig, that was confined "in a cruel manner." Id. Confinement in a cruel manner is defined in two ways. Cal. Health & Safety Code § 25991(e). First, Proposition 12 prohibits confining a breeding pig inconsistent with the Turn Around Provisions. Id. Second, Proposition 12 prohibits confining a breeding pig after December 31, 2021, if that breeding pig is in a space less than twenty-four (24) square feet of usable floorspace per pig (the "Square Footage Requirements"). Id. This, in effect, prohibits the confinement of breeding pigs in individual gestation stalls, except for limited circumstances including short periods for insemination, during nursing, and for the five days leading up to the expected date of birth.

Proposition 12 was passed with an effective date of December 19, 2018. Cal. Health & Safety Code § 25990. It specified that the Square Footage Requirements would not go into effect until January 1, 2022. Health & Safety Code § 25991(e)(3). Proposition 12 did not have a delayed date for the Turn Around Provisions or the sale prohibition and thus, these requirements have been into effect since December 19, 2018.

Proposition 12 imposes criminal sanctions on any "person who violates any of the provisions of this chapter" and subjects those persons to a fine of up to $1,000 or up to 180 days in county jail, or both. Cal. Health & Safety Code § 25993(b). But Proposition 12 fails to specify what constitutes a violation of the "chapter" including whether only sellers directly can be subject to criminal penalty or those in the chain of production outside of the state.

In addition to criminal sanctions, Proposition 12 also provides that a violation of Proposition 12 automatically constitutes unfair competition, and is punishable under California's Consumer Protection Statute, as prescribed in Division 7, Part 2, Chapter 5 of the Business and Professions Code, which imposes a fine of up to $2,500 per violation. Cal. Health & Safety Code § 25993(b). This Act permits any person to file a lawsuit to enforce the provisions of the chapter.

The California Department of Food and Agriculture on September 7, 2022, issued final regulations effective September 1, 2022.

i. *North American Meat Institute v. Becerra & Humane Society of the U.S.*, 825 Fed.Appx. 518 (Mem), U.S. Ct. App. Ninth Circuit, Oct. 15, 2020. The Court ruled that the district court did not abuse its discretion in holding that NAMI was unlikely to succeed on the merits of its dormant Commerce Clause claim. Specifically, the Court ruled that the district court did not abuse its discretion in ruling that Prop. 12 does not directly regulate extraterritorial conduct because it is not a price control or price affirmation statute. Further, the Court ruled that the district court did not abuse its discretion in holding that Prop. 12 does not substantially burden interstate commerce because it does not impact an industry that is inherently national or requires a uniform system of regulation. Finally, the Court ruled it was not an abuse of discretion to conclude that Prop. 12 does not create a substantial burden because the law precludes sales of meat products produced by a specified method, rather than imposing a burden on producers based on their geographical origin.

On June 28, 2021, the U.S. Supreme Court denied NAMI's petition for writ of certiorari.

ii. *National Pork Producers Council & American Farm Bureau Federation v. Ross*, 6 F.4th 1021, United States Court of Appeals, Ninth Circuit, July 28, 2021. The Court affirmed the district court's ruling that Prop. 12 did not have impermissible extraterritorial effect under the dormant Commerce Clause because it regulated only conduct in state and state law may require out-of-state producers to meet burdensome requirements in order to sell their products in state without violating dormant Commerce Clause; even if state's requirements have significant upstream effects outside of state, and even if burden of law falls primarily on citizens of other states.

On March 28, 2022, the U.S. Supreme Court granted writ of certiorari in this case, *Natl. Pork Producers Council v. Ross*, 598 U.S. 356 (2023) and oral arguments were held on October 11, 2022.

On May 11, 2023, the Supreme Court of the United States affirmed the dismissal of the lawsuit in a 5-4 decision. The majority held there was no "almost per se" rule prohibiting state laws with extraterritorial effect (5-4) and no discrimination against out-of-state commerce (not claimed in the lawsuit). The Court noted other potential constitutional claims that don't rely on discrimination.

The Court determined that Congress is equipped to do the balancing of the costs and benefits of Prop 12, not the courts (3-6). Lastly, the Court found that there was no substantial burden on interstate commerce (4-5). The speculative facts were not enough and there was evidence that some producers had already converted their facilities.

The dissent termed the Court's decision "fractured." The four Justices stated there was a substantial burden against interstate commerce and would have remanded to California federal court to conduct the balancing of the costs and benefits.

iii. *IPPA v. Bonta*, et al., 22-55336 (9th Cir. filed Mar. 30, 2022). Following the judge's dismissal of the case in federal court in Iowa, the Iowa Pork Producers Association filed a lawsuit now in federal court in California against California state officials alleging Criminal Due Process, Privileges & Immunities, Packers & Stockyards Act preemption, Discriminatory purpose & intent and Extraterritorial effect under the Dormant Commerce Clause.

The California Federal Court dismissed the lawsuit, and it was appealed to the 9th Circuit. The case was stayed pending the Supreme Court decision on *NPPC v. Ross*. The Court granted IPPA's motion to lift the stay and partially granted the motion to expedite the appeal. All parties have submitted briefs and oral arguments are scheduled for January 9, 2024.

b. <u>Massachusetts Question 3.</u>

The Massachusetts "Prevention of Farm Cruelty Act", Massachusetts Question 3, was to go into effect on August 15, 2022, for breeding pigs pursuant to an amendment passed by the Massachusetts Legislature on December 22, 2021, and codified as Acts (2021) Chapter 108. The law provides that it is unlawful for a business to knowingly sell whole pork meat in Massachusetts from a covered animal, or its immediate offspring, that was confined in a cruel manner.

Confined in a cruel manner means confining a breeding pig in a manner that prevents the animal from lying down, standing up, fully extending the animal's limbs or turning around freely.

Covered animal is any breeding pig (commercial), calf raised for veal, or egg laying hen that is kept on a farm.

Whole pork meat is any uncooked cut of pork, including bacon, ham, chop, ribs, riblet, loin, shank, leg, roast, brisket, steak, sirloin or cutlet, that is comprised entirely of pork meat, except for seasoning, curing agents, coloring, flavoring, preservatives and similar meat additives.

i. *Mass. Rest. Ass'n, et al. v. Healey, et al.*, 22-11245 (D. Mass. filed on Aug. 3, 2022). On August 3, 2022, the Massachusetts Restaurant Association, Hospitality Maine, New Hampshire Lodging & Restaurant Association, Rhode Island Hospitality Association, Restaurant Law Center, and the National Pork Producers Council filed suit challenging the law and requesting a stay of enforcement. By a stipulation of the parties filed on Aug. 10, 2022, in the case of *Mass. Rest. Ass'n. v. Healey*, enforcement of MAQ3 was stayed until 30 days after the final decision of SCOTUS.

   The parties in that case, which include NPPC, agreed that by rule the SCOTUS decision is not final until the time period for any petition for rehearing expired, which was June 12. No petition for rehearing was filed, so they agreed the stay will end on July 13. The Stay was extended until Aug. 23, 2023.

   On Aug. 4, 2023, the parties agreed:
   - Whole pork meat already in the supply chain as of 8/23/23 can continue to be sold in Massachusetts.
   - Massachusetts will issue new regulations allowing transshipment of whole pork meat through Massachusetts to other states.
   - While these regulations are being developed, Massachusetts will not enforce current rules on transshipments.

ii. *Triumph Foods, LLC, et al. v. Campbell, et al.*, 23-11671 (D. Mass). On July 25, 2023, Triumph Foods, Christensen Farms Midwest, LLC, The Hanor Company of Wisconsin, LLC, New Fashion Pork, LLC, Eichelberger Farms, Inc., and Allied Producers Cooperative filed a lawsuit challenging Massachusetts Q3 alleging violations of the U.S. Constitution including the Commerce Clause, Privileges and Immunities Clause, Full Faith and Credit Clause, Due Process Clause, and the Import-Export Clause. Furthermore, they alleged this regulation was preempted by the Federal Meat Inspection Act and Packers and Stockyards Act.

   Plaintiffs have filed a Motion for Partial Summary Judgment on the dormant Commerce Clause claim arguing Massachusetts' regulation of out-of-state farming practices is discriminatory. This Motion also included a Request for Oral Argument and an Expedited Briefing Schedule.

   Iowa, along with 12 other states, filed an Amicus Brief in support of Triumph Foods.

c. <u>Federal legislation.</u>

In rejecting courts balancing the pros and cons of Prop. 12, the Court remarked that "your guess is as good as ours. More accurately, your guess is *better* than ours." The point being that Congress, as an elected branch of our federal government, holds the power under the Constitution to regulate interstate commerce. Towards that end, legislation is being introduced in Congress (the "EATS Act") that would prohibit states from imposing "a standard or condition on the preharvest production of any agricultural

products sold or offered for sale in interstate commerce" in another state.

In addition, the Farm Bill sponsors are considering proposing language to nullify the effects of Prop 12 and other similar state laws.

d. Compliance with Prop. 12

On June 1, the CDFA issued a first set of FAQs stating that distributors of whole pork meat in California may register and self-certify for Prop. 12 until Jan. 1, 2024. After that, they must submit a third-party certification with a registration application or an annual renewal if they self-certified before Jan. 1, 2024. CDFA has stated the same process and timelines will be followed for producer certification.

In the June 1 FAQ's CDFA stated that for the remainder of 2023 it intended to focus on whole pork meat already in commerce. Following that, the judge in the California food industry businesses lawsuit entered a joint stipulation that whole pork meat that as of July 1 is in the possession of an end user, distributor or a USDA FSIS mandatory inspection facility (with an establishment number with the prefix of "M"), is exempt from Prop. 12 if it will be sold, transferred, exported or donated by Dec. 31, 2023.

In a second set of FAQ's issued July 1, CDFA clarified and emphasized two major points:

- The joint stipulation does not apply to whole pork meat from pigs that are harvested after July 1 and therefore does not push back implementation of Prop. 12 to Jan. 1, 2024. In other words, whole pork meat sold in California from pigs harvested after July 1 must comply with Prop. 12.
- Physical possession of non-compliant whole pork meat by July 1 by a distributor or a USDA FSIS mandatory inspection facility can be within or outside of California. End-users are by definition located in California.

In summary:

- Whole pork meat from pigs processed after 7/1/23 must be Prop 12 compliant
- Producers
    - Can self-certify during 2023
    - By 1/124 must be certified by CDFA-approved auditor
- Distributors
    - Can self-certify during 2023
    - By 1/1/24, must be certified by CDFA-approved auditor

There are many details producers must consider becoming Prop. 12 compliant. For example, although Prop. 12 does not require group sow housing, as a practical matter, because of the turn- around requirements that appears to be the most viable alternative for most production systems. And in calculating usable floor space, space for in-pen feeders must be deducted but space for free-access stalls or feeding stanchions can be included.

For CDFA's interpretation of these and other Prop. 12 requirements, see https://www.cdfa.ca.gov/AHFSS/AnimalCare/ Additional information on Prop. 12 implementation is available at NPPC's Resource Hub https://nppc.org/prop12/.

IV. Ag Fraud & Trespass Update

a. Summary of State's Ag Fraud and Trespass Statutes.

The discussion of ag fraud legislation and litigation has largely focused on what many perceive as attempts by confinement livestock producers to hide what is occurring on their farms in violation of First

Amendment Free Speech protections. On the other hand, livestock producers have long maintained the issue is property rights – the right to protect one's property from those who have no right to be on the property. The Eighth Circuit Court of Appeals focused on property rights when it found Iowa's 2012 ag fraud statute was constitutional ruling that a trespass is a legally cognizable harm and the right to exclude others from one's property is paramount. In this article we will review Iowa's path to this court decision, what may still be to come for Iowa's other ag fraud and trespass statutes, and how similar laws in other states may be impacted.

Generally, state ag fraud and trespass statutes impose criminal sanctions and civil liability to individuals entering agricultural and other food production related property without the consent of the property owner. Some statutes also punish individuals who obtain employment at agriculture facilities under false pretenses.

Iowa and other states have attempted to pass ag fraud and trespass statutes but have largely been unsuccessful in court against First Amendment Free Speech challenges. Before looking more closely at Iowa's legislation and litigation, we will summarize what has occurred in other states.

Arkansas

In 2017, Arkansas enacted Arkansas Code § 16-118-113 which imposes liability on anyone who knowingly gains access to a non-public area of a commercial property without authority, including employees entering the premises for reasons other than holding employment. The U.S. Court of Appeals for the Eighth Circuit reversed the district court and ruled that the plaintiffs had standing to bring the action.

Utah

In 2012, the Utah Legislature enacted an ag fraud statute criminalizing recording agricultural operations. The U.S. District Court of Utah ruled the statute violated Free Speech.

Wyoming

In 2015, the legislature passed legislation criminalizing trespassing to unlawfully collect resource data. The legislation was amended in 2016 to specify trespassing involved individuals entering private land only, removing the penalties to individuals on "open land." The U.S. District Court held that the 2016 statute was unconstitutional on First Amendment grounds.

North Carolina

In 2015, North Carolina passed the Property Protection Act that imposed civil penalties on employees who took videos or photos in non-public areas and shared them with individuals outside of their employers or law enforcement. The bill was originally vetoed by the governor, but the legislature overturned the veto. In 2020, the U.S. District Court struck down the law as violating the First Amendment. The case was appealed to the Court of Appeals.

The Fourth Circuit upheld the U.S. District Court's ruling holding that the Act could not apply to PETA's "newsgathering activities" but reserved other applications for case-by-case adjudication. The North Carolina Farm Bureau Federation petitioned the United States Supreme Court for a Writ of Certiorari on May 26, 2023.

Idaho

In 2018, the Ninth Circuit Court of Appeals ruled that Idaho Code § 18–7042 (2014) criminalizing entry into an agricultural production facility by misrepresentation violated the First Amendment but that statute criminalizing obtaining records of an agricultural production facility by misrepresentation did not violate the First Amendment. The Court also ruled that the statute criminalizing obtaining employment with an agricultural production facility by misrepresentation with the intent to cause economic or other injury to the facility's operations, property, or personnel, did not violate the First Amendment. Finally, the Court ruled that the statute prohibiting a person from entering a private agricultural production facility and, without express consent from the facility owner, making audio or video recordings of the conduct of an agricultural production facility's operations violated the First Amendment.

Kansas

The most recent appellate court decision examined Kansas' ag fraud statute and found the statute unconstitutional. Kansas Statutes Ann. §§ 47-1825-1828 imposes criminal and civil penalties if individuals take pictures or videos without consent of the owner and with intent do damage animal facility. The U.S. Court of Appeals for the Tenth Circuit held that the statute was viewpoint discriminatory in violation of the First Amendment.

Iowa

Between 2012 and 2021 Iowa adopted four ag law/trespass statutes. During this time, the Iowa legislature kept a close eye on Idaho's law and court decisions interpreting that law. Looking at the chronological order of Iowa and Idaho legislation and litigation reveals much about the thought process of Iowa's legislature in enacting these laws, and how other states were reacting as well:

- 2012: The Iowa legislature enacted Iowa Code § 717A.3A (2012) (agriculture production facility fraud) which established criminal penalties for using false pretenses to obtain a job at or access to an agricultural operation.
- 2014: As previously discussed, the Idaho legislature enacted Idaho Code § 18–7042 (2014).
- 2018: The Ninth Circuit Court of Appeals ruled that the 2014 Idaho statute criminalizing obtaining employment with an agricultural production facility by misrepresentation with the intent to cause economic or other injury to the facility's operations, property, or personnel, did not violate the First Amendment. The Court found the remainder of the law, including the access provision, unconstitutional.
- 2019:
  - The U.S. District Court for the Southern District of Iowa ruled that Iowa's 2012 ag fraud law violated Free Speech. Iowa appealed the decision.
  - The Iowa Legislature enacted Iowa Code § 717A.3B (2019) (agricultural production facility trespass) drafting it to be essentially substantively identical to Idaho's 2014 statute.
  - The U.S. District Court for the Southern District of Iowa granted Plaintiff's Motion for Preliminary Injunction prohibiting enforcement of Iowa Code § 717A.3B pending a final decision in the case. That decision was issued in 2022. See discussion below.
- 2020: The Iowa legislature enacted Iowa Code § 716.7A (2020) (food operation trespass).
- 2021:
  - The Iowa legislature enacted three criminal statutes:
    - Iowa Code § 716.13 (2021) (interference with transportation of agricultural animals).
    - Iowa Code § 716.14 (2021) (unauthorized sampling).
    - Iowa Code § 727.8A (2021) (cameras or electronic surveillance devices – trespass).
  - The Eighth Circuit Court of Appeals ruled that the provision in the 2012 Iowa Ag-Fraud Law (Iowa Code § 717A.3A) making it a crime if a person willfully "obtains access to an agricultural production facility by false pretenses" did not violate First Amendment Free Speech protections because it prohibits exclusively lies associated with a legally cognizable harm—namely, trespass to private property. The Court found that trespass, even though it may cause only nominal damages to the property owner, is nonetheless a legally cognizable harm. The Court cited a recent U.S. Supreme Court decision stating that "[t]he right to exclude is one of the most treasured rights of property ownership." All three justices joined in this ruling, with each writing separately. The Court then ruled, with one justice dissenting, that the employment provision of the law violated the First Amendment because the false statements with an employment application were not required by the law to be material to the employment decision.
  - Iowa Code § 727.8A (cameras or electronic surveillance devices – trespass) was challenged in U.S. District Court, Southern District of Iowa, as a violation of Free

Speech.
    - As previously discussed, the Tenth Circuit Court of Appeals struck down a Kansas statute that prohibited trespassing by use of deception or false speech with intent to damage the facility.

- 2022:
    - Iowa District Court, citing the Eighth Circuit's ruling in Reynolds, ruled that the 2020 Food Operation Trespass statute is constitutional.
    - U.S. District Court for the Southern District of Iowa ruled that the 2019 agricultural production facility trespass law (Iowa Code § 717A.3B) to be a violation of the First Amendment. The Court followed the reasoning of the Tenth Circuit in *Kelly* and without analysis distinguished the Eighth Circuit ruling in Reynolds. This case is currently on appeal to the Eighth Circuit.
    - On September 26, 2022, the U.S. District Court for the Southern District of Iowa denied Defendant's Motion to Dismiss and granted Plaintiffs' motion for Summary Judgment. The Court held Iowa Code § 727.8A violated First Amendment rights to free speech in that compared to other criminal laws, it is insufficiently tailored compared to its burden on speech by only punishing a trespasser exercising a constitutional right. The court once again followed the reasoning of *Kelly* opining that in First Amendment protections for those who trespass there are two related by distinct concepts. The ability to exclude others from property is constitutionally permissible, by the criminal penalties for those persons' speech violations the First Amendment. This case is currently on appeal to the Eighth Circuit.
- 2023:
    - The Eighth Circuit heard oral arguments on challenges to the 2019 agricultural production facility trespass law (Iowa Code § 717A.3B) and the 2021 trespass surveillance law (Iowa Code § 727.8A)

The Eighth, Ninth and Tenth Circuit Courts, as well as an Iowa District Court, have reached different conclusions on the constitutionality of relatively similar statutes. The Ninth Circuit in Wasden upheld Idaho's employment provision but not the access provision. The Eighth Circuit in Reynolds upheld Iowa's access provision but not the employment provision. And the Tenth Circuit in Kelly in essence, and contrary to Reynolds, gave more weight to rights of Free Speech than to property rights.

Given the continuing legislative activity and litigation uncertainty surrounding these laws, livestock producers are well advised to take steps to protect their property interests, including the following:

- Maintain physical security such as locks on building doors and entrance gates to the property;
- Maintain electronic security such as video surveillance cameras and motion-sensor lighting;
- Continue the more time-honored approach to security such as posting no trespassing signs;

In the employment context, although maybe easier said than done, conduct extensive and detailed interviewing of job applicants.

Finally, livestock producers should adopt animal welfare policies and all employees should be trained in proper animal husbandry. Employees should be instructed and encouraged to report any employee who is not following proper husbandry. After all, putting all legal issues aside, animal well-being remains the most critical issue.

b. <u>Drones</u>.

i. *Nat'l Press Photographers Ass'n v. McCraw*, No. 22-50337, 2023 WL 6968750 (5th Cir. Oct. 23, 2023). In Texas, Chapter 423 of the Texas Government Code restricted the use of drones to collect images of private property or to conduct surveillance. This law was challenged by the National Press Photographers Association (NPPA) and other journalists. The U.S. District Court for the Western District of Texas held that the statutes making it unlawful to fly an unmanned aerial

vehicle over private property were unconstitutional The Court determined the restriction was content-based and not narrowly tailored to a compelling government interest.

On appeal, the 5th Circuit Court of Appeals overturned the District Court and upheld the constitutionality of the Texas Drone law. The 5th Circuit found drones have the potential to invade the privacy rights of others and the government's ability to accomplish its goal of protecting privacy rights would be "achieved less effectively" without the surveillance provisions.

ii. During the 2023 Session, the Iowa Legislature introduced HF 572 that would prevent "remotely piloted aircraft" from flying within 400 feet of homesteads or livestock facilities. Violators would face criminal penalties for intruding into the airspace or conducting surveillance, which includes taking photos or audio recordings. The bill was passed in the Iowa House of Representatives but was not brought to a vote in the Senate.

V. Ag Nuisance Update

Beginning in the 1970's, the threat of litigation against livestock operations for nuisance from odor and other concerns such as flies has ebbed and flowed over the years, but it has never gone away. There was a surge in cases in the late 1990's and early 2000's then a lull from 2009 until 2015. In 2015 and 2016 two cases went to trial, and again in 2019 two cases went to trial. Following these jury verdicts in 2019, no livestock nuisance cases have gone to trial in Iowa and currently none are reported to be on file.

During this same time period, the Iowa Supreme Court was called upon to rule on the constitutionality of Iowa's right-to-farm laws (also referred to as nuisance defense laws). In 1998 the Iowa Supreme Court ruled that the nuisance defense established in 1982 by Iowa's ag area law (Iowa Code §352.11) was an unconstitutional taking of private property. See *Bormann v. Board of Supervisors of Kossuth County*, 584 N.W.2d 309 (Iowa 1998). In 2004 the Iowa Supreme Court ruled that the 1998 animal feeding operation nuisance defense (Iowa Code §657.11) was unconstitutional because it violated the Iowa Constitution Inalienable Property Rights Clause. *Gacke v. Pork Xtra, LLP*, 684 N.W.2d 168 (Iowa 2004). Then in 2018 the Iowa Supreme Court ruled that if each plaintiff in a nuisance case proved three factors established in the 2004 case, the AFO nuisance defense was unconstitutional. *Honomichl et. al. v. Valley View Swine, LLC and JBS Live Pork, LLC*, 914 N.W.2d 223 (Iowa 2018). Those factors were: (1) each plaintiff received no particular benefit from the nuisance immunity other than what the public received in general, (2) each suffered significant hardship, and (3) each lived on their property long before any animal operation began and that each spent considerable money in property improvements. *Id.* Finally, on June 30th the Iowa Supreme Court overturned its two previous rulings by rejecting the three-factor test and ruling that the AFO nuisance defense was constitutional. *Garrison v. New Fashion Pork, LLP & BWT Holdings, LLLP*, 977 N.W.2d 67 (Iowa).

a. Iowa Supreme Court Ends Iowa's Struggle With the Constitutionality of the Nuisance Defense

In *Garrison* the Iowa Supreme Court, in a 4-3 decision, overruled its decisions in 2004 and 2018 which resulted in the AFO nuisance defense being unconstitutional in most cases. In this case the Court ruled that the AFO nuisance defense is constitutional.

As background, the AFO nuisance defense was adopted in 1995 and amended in 1998. To qualify for the defense, the nuisance cannot arise out of a failure of the livestock operation to comply with federal or state law. In addition, the nuisance cannot be unreasonable, cannot occur for substantial periods of time, and the livestock operation must use "prudent generally accepted management practices reasonable for the operation." This nuisance defense applies regardless of the established date or expansion of the operation, i.e., the livestock operation does not have to be "first in time." Iowa Code §657.11.

In *Garrison*, the Court majority rejected the 2004 case ruling that it was wrongly decided. The Court ruled

that the legislature had the right to enact the AFO nuisance defense ruling that "balancing the competing interests of CAFO operators and their neighbors is a quintessentially legislative function involving policy choices our constitution places with the elected branches." The Court noted that all fifty states have passed similar right-to-farm laws, but no other state supreme court has ruled their law unconstitutional. Rather, courts in other states have without exception rejected constitutional challenges. The Court emphasized that the 2004 decision was clearly erroneous and an "outlier' in Iowa court decisions, as well as nationally.

The Court emphasized that the AFO nuisance defense does not eliminate nuisance rights. Rather, plaintiffs can prevail in a nuisance case if the nuisance is caused by a failure to comply with state or federal law or if the livestock operation failed to use generally accepted management practices and unreasonably interfered with the plaintiff's use of their property for substantial periods of time. Also, the AFO nuisance defense does not prohibit claims for loss in property value from a nuisance.

b. Iowa Jury Verdicts in Favor of Livestock Producers

In 2018 following well-publicized multimillion dollar nuisance jury verdicts against hog operations in North Carolina, many became concerned that similar verdicts might be in store for Iowa producers. That concern was not realized in the next two cases that went before Iowa juries in 2019. In those cases, the juries found that the livestock operations were not nuisances and awarded no money to the plaintiffs.

Lympus & Fitzgerald v. Brayton & Higgins, Buchanan County District Court, Jan. 9, 2019, involved an 800 head cattle concrete open feedlot with a concrete runoff control basin brought by three plaintiffs living in two residences, each approximately 500 ft. north of the feedlot. The District Court ruled that the Iowa Code Chapter 657.11 animal feeding operation nuisance defense was constitutional under the Honomichl factors analysis. The jury returned a verdict of no nuisance as to each plaintiff.

Lappe, Bergthold & Sternat v. AWP Pork, LLC, Solar Feeders, LLC, Bill Huber & Kansas-Smith Farms, LLC, Henry County District Court, Feb. 5, 2019, was against three 4,992 head swine finishing operations, each located approximately one-half mile apart. There were six plaintiffs living in three residences, each located from the nearest of the three swine operations 1.5 miles northeast, 1.66 miles north, and 1.04 miles northwest, respectively. The District Court ruled that the Iowa Code Chapter 657.11 animal feeding operation nuisance defense was not constitutional under the *Honomichl* factors analysis. The jury returned a verdict of no nuisance as to each plaintiff. If the jury had found a nuisance and awarded damages, the trial court stated it would have applied the Iowa Code §657.11A nuisance defense damage limitation provisions to defendant Kansas-Smith Farms, LLC because the cause of action against it did not accrue until after the effective date of the law. But because the jury found there was no nuisance the §657.11A nuisance defense was moot.

These two cases are the latest of fourteen ag nuisance cases that went to trial in Iowa beginning in 1994. From 1994 until 2004 seven cases went to trial. Six of these were swine operations and all but one were found to be a nuisance. By contrast, from 2008 until 2019 seven cases went to trial, four swine operations and three cattle operations, and all but one were found not to be a nuisance, including the last three jury trials.

c. Nuisance Defense/Right to Farm Laws

As the Iowa Supreme Court noted in *Garrison*, all states have some type of nuisance defense law that provides protections to ag nuisance lawsuits. In addition to the AFO nuisance defense previously discussed, in 2017 Iowa adopted a nuisance defense law that limits the amount of money a plaintiff can be awarded in trial. Iowa Code §657.11A. The law provides that money damages (other than punitive damages) cannot exceed (1) any decrease in the fair-market-value of the property (residence, etc.), plus (2) any medical damages, if the nuisance is the proximate cause of an adverse medical condition, and plus

(3) any special damages (annoyance and loss of comfortable use and enjoyment of property) that are limited to no more than one and one half times the decrease in fair market value of property plus medical damages. To qualify for the protection of this law a producer must meet the same requirements such as compliance with applicable law and use generally utilized management practices.

It is important that producers recognize that striving to manage their operations to minimize odors, flies and any other nuisance conditions will not only maximize their ability to utilize any state law nuisance defense protections but will also greatly improve their chances of not getting sued. These two nuisance defense laws, both of which provide protection only to producers who comply with applicable law and adopt good management practices, will help qualifying producers avoid attorney fees and other costs of defending a lawsuit. After all, the best nuisance case to defend is the one that is never filed.

d. Stray Voltage – *Vagts v. Northern Natural Gas Company*

Livestock operations have been successful in claiming damages for stray voltage. Stray voltage is a low-level electrical current that can cause animals discomfort and health issues. Dairy cattle are especially susceptible to stray voltage because it can cause a decrease in milk production, lower feed and water intake, and reproductive issues. Lawsuits, often against electrical utility companies, have proven to be successful in awarding damages for negligence, strict liability, and nuisance. Midwestern farmers have been awarded damages up to $14 million.[1]

In Fayette County, the Vagts Dairy brought nuisance and negligence claims against Northern Natural Gas Company for the cathodic protection device on the pipeline. The electric current is imposed intended to prevent corroding. The Vagts asserted the stray voltage from this current caused a decrease in milk production, reproductive problems, and death of their animals resulting in a significant decrease in profitability at their dairy. The jury delivered a verdict in favor of the Vagts holding the Northern Natural Gas Company was the proximate cause of damages to the Vagts and significant harm resulted from the unreasonable invasion of Vagt's private use and enjoyment of their land. In January of 2023, the jury awarded $4.75 million in damages; $500,000 for loss of use and enjoyment of land, $3,000,000 for economic damages, and $1,250,000 for personal inconvenience, annoyance, and discomfort. This case is currently on appeal to the Supreme Court of Iowa.

e. Nuisance insurance.

Insurance policies or riders to policies that provide coverage for nuisance and other agricultural environmental claims are available. Insurance policies are contracts and coverage for any type of liability, including nuisance, depends on the terms of the individual policy. For that reason, livestock producers interested in coverage for nuisance liability must review their individual policy. In general, because nuisance actions against livestock operations almost always involve odor, liability insurance protection for the livestock operator from general farm liability policies is usually not available because of exclusions in the policy, including the "pollution exclusion."

The bottom line is that producers who are constructing or expanding an operation should check with their insurance agent and other advisors as soon as possible to determine if they have or can get coverage for a nuisance lawsuit. In addition to determining if there is coverage, a producer must know what is covered. Coverage may include, subject to policy limits, attorneys fees and other court related expenses as well as any damages a court may award.

[1] Mary Francque, *Stray Voltage and Dairy Farms can Lead to Large Damage Awards*, IOWA STATE UNIV. CTR. FOR AGRIC. LAW AND TAX'N (May 16, 2018), https://www.calt.iastate.edu/article/stray-voltage-and-dairy-farms-can-lead-large-damage-awards.

f. Practical steps to avoid nuisance litigation and qualify for Iowa law protections.

Like other aspects of today's agriculture, technology provides livestock producers options to improve odor mitigation in their operations. However, basic management practices to control odor and flies remain the first and best approach. These practices include:

- Communication with neighbors as much as possible. Producers should also encourage neighbors to in turn communicate about what they are experiencing.
- Awareness of and compliance with—and as much as reasonably possible, exceedance of—all legal requirements for the farm. This includes animal capacity requirements as well as setbacks and manure management regulations.
- Design and construction of farms to minimize impact on neighbors, including locating as far from neighbors and public areas as possible and considering prevailing winds during warm weather months. Planting tree buffers utilizing existing trees and fast-growing trees planted with slower growing species. Site design and maintenance with minimal visibility to neighbors and utilizing the latest design technology to minimize odor, including ventilation management.
- Available technologies to minimize potential nuisance conditions, including products that reduce ammonia, hydrogen sulfide, particulate matter, odor and flies in buildings and manure storage.
- Best management practices include mortality handling, injecting manure, and keeping facilities and pigs as clean as possible.

There are no guarantees that these steps will help avoid a lawsuit and not all of these steps apply to all situations. But producers who take all reasonable steps for their operation to try to minimize the impact of their farms will greatly improve their chances of avoiding a lawsuit and will qualify for protection from Iowa's nuisance defense laws.

VI. Iowa Statutory Ag Liens.

a. State Statutory Ag Liens Under Article 9. Article 9, as revised and effective July 1, 2001, applies to agricultural liens. Iowa Code §554.9109(1)(b).

b. Iowa Statutory Liens Qualifying as Agricultural Liens:
   i. Landlord's Lien, Iowa Code Chapter 570.
   ii. Agricultural Supply Dealer's Lien, Chapter 570A.
   iii. Harvester's Lien, Chapter 571.
   iv. Custom Cattle Feedlot Lien, Chapter 579A.
   v. Commodity Production Contract Lien, Chapter 579B.
   vi. Lien for Services of Animals, Chapter 580. (owner, keeper or artificial inseminator has prior lien on progeny of a stallion, bull, or jack)
   vii. Veterinarian's Lien, Chapter 581.

c. Filing Required to Perfect Ag Liens. Iowa Code § 554.9310 provides:

   "(1) A financing statement must be filed to perfect all . . . agricultural liens…

   …(3) If a secured party assigns a perfected security interest or agricultural lien, a filing under this Article is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor."

d. Maintaining a Perfection of an Ag Lien When the Collateral is Moved to Another State. Iowa Code §554.9302 provides: "While farm products are located in a jurisdiction, the local law of that

jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of an agricultural lien on the farm products."

Note: This section provides a different choice of law for ag liens than for security interests under Iowa Code §554.9301 (general rule is that perfection and priority of security interests are governed by the law of the jurisdiction where the debtor is located.)

If agricultural lien collateral leaves the state, the agricultural lien must be perfected in the state where the collateral is moved. If the lien is not perfected in that state, the lien loses its priority during the time the collateral is in that state. See Iowa Code section 554.9302 ("While farm products are located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of an agricultural lien on the farm products.") Also see UCC 9-316, Official Comment 7, Example 10.

e. Continuation of Perfection of Ag Lien Upon Sale and Attachment to Proceeds. Iowa Code §554.9315: "Except as otherwise provided in this Article and in section 554.2403, subsection 2:

   a. a security interest or agricultural lien continues in collateral notwithstanding sale, lease, license, exchange, or other disposition thereof unless the secured party authorized the disposition free of the security interest or agricultural lien; and

   b. a security interest attaches to any identifiable proceeds of collateral."

Note: Reading Art. 9 literally, an agricultural lien does not attach to proceeds by the provisions of Art. 9. Any attachment to proceeds by an agricultural lien must arise from the lien statute itself. See 9-322 Official Comment 12. In addition, courts have ruled that an ag lien can attach to proceeds due to the underlying policy of the lien statute and because comment 9 to 554.9315 states that Article 9 does not determine whether a lien extends to proceeds of farm products subject to an ag lien. See In Re Schley discussed below.

Note: Because of the requirements in the two previous sections, one commentator has stated: "In light of the limit on proceeds, and the different filing rules, it might be wise for a creditor relying on an agricultural lien to also get a consensual security agreement. There is no prohibition to having two bites at the apple. Even without a security agreement, if the statute creating the agricultural lien contains an enforcement mechanism, the creditor should be able to enforce its statutory lien under either Part 6 of Article 9 or the statutory mechanism." The Law of Secured Transactions Under the Uniform Commercial Code, Barkley Clark, paragraph 8.09, p. 8-121.

f. Federal Food Security Act and Written Notice – Not Applicable to Ag Liens. Iowa Code §554.9320, Buyer of Goods, provides: "Buyer in ordinary course of business. Except as otherwise provided in subsection 5, a buyer in ordinary course of business, other than a person buying farm products from a person engaged in farming operations, takes free of a security interest created by the buyer's seller, even if the security interest is perfected and the buyer knows of its existence."

7 U.S.C. §1631 provides that a buyer who in the ordinary course of business who buys a farm product from a seller engaged in farming operations takes free of a security interest created by the seller, even though the security interest is perfected; and the buyer knows of the existence of such interest unless, in states such as Iowa, the seller has provided direct written notice of the security interest to the buyer.

Iowa Code §554.9102(4) provides: "For purposes of the Federal Food Security Act, 7 U.S.C. § 1631,

written notice shall be considered to be received by the person to whom it was delivered if the notice is delivered in hand to the person, or mailed by certified or registered mail with the proper postage and properly addressed to the person to whom it was sent. The refusal of a person to whom a notice is so mailed to accept delivery of the notice shall be considered receipt."

Note: Compliance with direct notice provisions of Iowa and Federal law to preserve an agricultural lien in proceeds should not be required because the Federal Food Security Act refers to security interests (security interest is defined as an interest in farm products that secures payment or performance of an obligation) and because the Food Security Act has been interpreted to apply to consensual liens, but not nonconsensual liens. See 7 U.S.C. section 1631(e)(refers to security interests created by the seller) and Farm Financing Under Revised Article 9, Linda J. Rusch, American Bankruptcy Law Journal, Vol. 73, p. 211, 245-246 (1999). However, from a practical perspective, in certain situations a producer may want to voluntarily notify a buyer of farm products of the producer's ag lien.

g. Termination. Within 20 days after a secured party receives an authenticated demand from a debtor, the secured party shall cause the secured party of record for a financing statement to send to the debtor a termination statement for the financing statement or file the termination statement in the filing office if there is no obligation secured by the collateral remaining. Iowa Code §554.9513.

h. Priority of Ag Liens. Iowa Code §554.9322(7) provides that a perfected agricultural lien on collateral has priority over a conflicting security interest in or agricultural lien on the same collateral if the statute creating the agricultural lien gives priority.

The following chart shows the priority of perfected Iowa Ag Liens in addition to the priority over later perfected UCC security interests and UCC liens:

Iowa Code Chapter	Lien	Priority as provided in statute
570	Landlord's Lien	Any prior security interest and prior perfected lien, except Harvester's Lien, Mechanic's Lien, Custom Cattle Feedlot Lien, Commodity Production Contract Lien, or Veterinarian's Lien. IC 570.1(2)
570A	Ag Supply Dealer's Lien	Feed: Any prior perfected lien or security interest to the extent of the difference in the acquisition price of the livestock and the fair market value of the livestock at the time the lien attaches or the sale price of the livestock, whichever is greater IC 570A.5(3) Other ag supplies: Equal priority to prior perfected lien (except LL's lien or Harvester's lien) and security interest if certified notice sent IC 570A.5(2)
571	Harvester's Lien	Any prior perfected security interest or Landlord's lien IC 571.3A(2)
579A	Custom Cattle Feedlot Lien	Any prior perfected security interest or lien other than a perfected Vet's lien or Emergency care of livestock lien IC 579A.2(5)
579B	Commodity Production Contract Lien	Any prior perfected security interest or lien other than a perfected Vet's lien or Emergency care of livestock lien IC 579B.4(4)
581	Veterinarian's Lien	Any prior perfected security interest or lien except Emergency care of livestock lien IC 581.2(2)
717	Emergency Care of Livestock	Any prior perfected security interest or lien IC 717.4(5)

i. Landlord's Lien, Iowa Code Chapter 570.

(1) A landlord has a lien for the rent on crops grown on the premises, and on any other personal property of the tenant which has been used or kept on the leased premises which is not exempt from execution. Iowa Code §570.1(1).

(2) Iowa Code §570.1, expressly provides that a landlord's lien on farm products has priority over conflicting perfected Article 9 security interests, including those perfected before the landlord's lien was created, if the landlord's lien is perfected by filing a financing statement with the Iowa Secretary of State when the tenant takes possession of leased premises or within 20 days after the tenant takes possession. Iowa Code §570.1(2).

(3) Section 570.1(3) requires that a financing statement "include a statement that it is filed for the purpose of perfecting a landlord's lien." A financing statement perfecting a Landlord's Lien is effective until a termination statement is filed.

(4) The lien continues for one year after the rent is due or six months after the end of the lease, whichever is earlier. Iowa Code §570.2.

(5) The lien may be enforced as follows:

1. Under Iowa Code §570.5, "by the commencement of an action, within the period above prescribed, for the rent alone, in which action the landlord shall be entitled to a writ of attachment, upon filing with the clerk a verified petition, stating that the action is commenced to recover rent accrued within one year previous thereto upon premises described in the petition; and the procedure thereunder shall be the same, as nearly as may be, as in other cases of attachment, except no bond shall be required."
2. Under the general Art. 9 provisions for enforcement of an agricultural lien as provided in chapter 554, article 9, part 6.

Note:

a. Iowa farm lease law requires that the termination date for farm tenancies be March 1 in the year that the lease terminates. Iowa Code §562.5. Thus, because most farm leases begin on March 1 and a tenant takes possession on that date, a financing statement perfecting a landlord's lien on farm products would have to be perfected by March 20 in the year which the lease begins. Under 570.1, a landlord's lien can be perfected prior to the date of the tenant's possession. It would appear that the landlord's lien would become effective at the time the debtor (tenant) takes possession, normally when the lease begins. Iowa Code §554.9509(1)(a) provides that a financing statement may be filed to perfect an agricultural lien that has not become effective only if the debtor (tenant) has authorized the filing in an authenticated record. Thus, a landlord may file a financing statement prior to the beginning of the lease only if the tenant has so authorized in the lease or in a separate authenticated record.

b. Landlord lien filings do not lapse after five years. However, as a precaution to avoid disputes, landlords may want to file a continuation statement for UCC-1's that remain in effect and have been on file five years.

c. Under Iowa farm lease law, a farm lease for a term of years continues past the contractual term under the same terms and conditions on a year-to-year basis unless it is terminated before September 1 of the final year of the contractual term. Iowa Code §562.6 and Pollock v. Pollock, 72 N.W.2d 483, 485 (Iowa 1955). The question is whether a landlord under a lease that continues pursuant to 562.6 must perfect a landlord's lien by filing every year. In addition, even if a new lease is entered into between the same landlord and tenant for the same land, must a financing statement be filed to perfect a landlord's lien under the new lease?
While Chapter 570.1 and Article 9 do not expressly answer this question, the safest course of action is to file each year within twenty days after the lease term begins.

d. A properly perfected landlord's lien has priority over a conflicting security interest or lien, including a prior perfected security interest ("super priority") and other ag liens except a

properly perfected Harvester's Lien, Mechanic's Lien, Custom Cattle Feedlot Lien, Commodity Production Contract Lien, or Veterinarian's Lien.

e. Although Iowa Code §570.1 does not expressly provide that the lien attaches to proceeds, the Iowa Supreme Court has ruled (before Rev. Art. 9 was adopted) that the lien created by Iowa Code section 570.1 extends to proceeds of crops grown on leased premises and has priority over a prior perfected security interest. Meyer v. Hawkeye Bank & Trust Co., 423 N.W.2d 186, 188-189 (Iowa 1988) and Perkins v. Farmers Trust and Savings Bank, 421 N.W.2d 533, 534-535 (Iowa 1988).

f. Under Art. 9, a landlord may file a financing statement to perfect a security interest in crops or livestock granted in a lease. (This may be done because Bankruptcy Code section 545 may be interpreted to allow a bankruptcy trustee to avoid a landlord's lien.) This financing statement perfects a security interest and not an ag lien. Such a perfected security interest does not have the super priority provided by the landlord's lien.

j. Custom Cattle Feedlot Lien, Chapter 579A.

(1) A custom cattle feedlot operator has a nonpossessory lien on cattle and identifiable cash proceeds for the amount of the cost for the care and feeding of the cattle. Iowa Code §579A.2(2).

(2) The lien is effective when the cattle arrive at the feedlot and continues for one year after the cattle leave the feedlot. Iowa Code §579A.2(3)(b).

(3) The lien is perfected by filing a financing statement with the Secretary of State within 20 days of the arrival of the cattle at the feedlot.

(4) The lien may be enforced under Iowa Code §579A.3 as follows:
"While the cattle are located at the custom cattle feedlot, the custom cattle feedlot operator may enforce a lien created in section 579A.2 in the manner provided for the enforcement of an agricultural lien as provided in chapter 554, article 9, part 6. After the cattle have left the custom cattle feedlot, the custom cattle feedlot operator may enforce the lien by commencing an action at law for the amount of the lien against either of the following:
1. The holder of the identifiable cash proceeds from the sale of the cattle.
2. The processor who has purchased the cattle within three days after the cattle have left the custom cattle feedlot."

(5) With the exception of a perfected Veterinarian's Lien, a perfected Custom Cattle Feedlot lien has priority over other statutory liens and Art. 9 security interests, regardless of when they are perfected. Iowa Code §579A.2(5)(a).

(6) Waivers of rights provided by the chapter are void. Iowa Code §579A.4.

(7) A custom cattle feedlot operator may file and enforce a lien under 579A or 579B, but not both. Iowa Code §579A.5.
Note: Unlike a financing statement perfecting a Landlord's Lien, an express statement that a Feedlot Lien is being perfected is <u>not</u> required.
Note: Some Iowa custom cattle feeders provide financing to the owners of the cattle placed in their feedlots for the purchase price of the cattle. This loan is then repaid upon sale of the cattle. These custom cattle feeders must be advised that neither the Custom Cattle Feedlot Lien nor the Commodity Production Contract Lien provides a lien for financing of the cattle. To obtain a priority security interest in the cattle for the amount financed, the cattle feeders must follow other procedures such as obtaining a purchase money security interest in livestock under Iowa Code 554.9324(4) or obtaining a subordination agreement from prior perfected secured parties.

k. Commodity Production Contract Lien, Chapter 579B.

(1) A producer feeding another person's cattle, sheep or swine (poultry are not included) or

raising another person's crop on the producer's farm (crops are defined to include "a plant used for food, animal feed, fiber, or oil . . ." Note that crops used for other purposes such as seed or pharmaceuticals are not included) has a nonpossessory lien on the livestock or crop and cash proceeds for the amount of the services provided. Iowa Code §579B.2 and .3.

(2) If the livestock or crop is sold by the contractor, the lien shall be on cash proceeds from the sale. Cash held by the contractor shall be deemed to be cash proceeds from the sale regardless of whether it is identifiable cash proceeds. Iowa Code §579B.3.

(3) If the livestock is slaughtered or the crop is processed by the contractor, the lien shall be on any property of the contractor that may be subject to a security interest as provided in section 554.9109. Iowa Code §579B.3.

(4) The lien is effective when the livestock arrive at the farm or when the crop is planted and continues for one year after the livestock or crop leave the control of the producer. Iowa Code §579B.4.

(5) The lien is perfected by filing a financing statement with the Secretary of State within 45 days of the arrival of the livestock or planting of the crop.

(6) In addition, if there is "continuous arrival" of livestock at the animal feeding operation (monthly or more frequent as provided by contract), the lien may be perfected by filing within 180 days after the livestock's arrival.

(7) With the exception of a perfected Veterinarian's Lien, a perfected Commodity Production Contract Lien has priority over other statutory liens and Art. 9 security interests, regardless of when they are perfected. Iowa Code §579B.3.

(8) The lien may be enforced under Iowa Code §579B.5 as follows:
"Before a commodity leaves the authority of the contract producer as provided in section 579B.3, the contract producer may enforce a lien created in that section in the manner provided for the enforcement of an agricultural lien as provided in chapter 554, article 9, part 6. After the commodity is no longer under the authority of the contract producer, the contract producer may enforce the lien in the manner provided in chapter 554, article 9, part 6."

(9) Waivers of rights provided by the chapter are void. Iowa Code §579B.6.

(10) A custom cattle feedlot operator may file and enforce a lien under 579A or 579B, but not both. Iowa Code §579B.7.
Note: Neither 579A or 579B allow for perfecting the lien before the lien becomes effective, even though Art. 9 (§554.9509(1)(a)) would permit this if the debtor (owner of the cattle or commodity) had authorized the filing in an authenticated record.
Note: Because a custom cattle feedlot operator may file and enforce a lien under 579A or 579B, a feedlot operator who misses the 20-day perfection period in 579A could utilize the 45-day perfection period (or 180 days if there is continuous arrival) in 579B.
Note: Unlike a financing statement perfecting a Landlord's Lien, an express statement that a Commodity Production Contract Lien is being perfected is <u>not</u> required.

l. <u>Agricultural Supply Dealer's Lien, Chapter 570A</u>. The Ag Supply Dealer's lien creation, perfection and priority provisions are:

(1) An agricultural supply dealer who provides an agricultural supply to a farmer shall have an agricultural lien. Iowa Code 570A.3

(2) The amount of the lien is the amount owed to the agricultural supply dealer for the retail cost of the agricultural supply, including labor provided. The lien applies to crops or livestock.

(3) The lien is perfected by filing a financing statement with the Iowa Secretary of State within 31 days after the ag supply is purchased. Iowa Code 570A.4.

(4) For livestock feed, the lien has priority over an earlier perfected lien or security interest to the extent of the difference between the acquisition price of the livestock and the fair market value of the livestock at the time the lien attaches or the sale price of the livestock, whichever is greater. Iowa Code 570A.5(3).

(5) For all other ag supplies, the lien has the following priority:

"Except as provided in section 570A.2, subsection 3, the lien shall have equal priority to a lien or security interest which is perfected prior to the time that the agricultural supply dealer's lien is perfected. However, a landlord's lien that is perfected pursuant to section 570.1 shall have priority over a conflicting agricultural supply dealer's lien as provided in section 570.1, and a harvester's lien that is perfected pursuant to section 571.3 shall have priority over a conflicting agricultural supply dealer's lien as provided in section 571.3A. 3." Iowa Code 570A.5(2).

The exception referenced at the beginning of 570A.5(2) is:

"570A.2 Financial institution memorandum to agricultural supply dealers.

1. Upon the receipt of a certified request of an agricultural supply dealer, prior to or upon a sale on a credit basis of an agricultural supply to a farmer, a financial institution which has either a security interest in collateral owned by the farmer or an outstanding loan to the farmer for an agricultural purpose shall issue within four business days a memorandum which states whether or not the farmer has a sufficient net worth or line of credit to assure payment of the purchase price on the terms of the sale. The certified request submitted by the agricultural supply dealer shall state the amount of the purchase and the terms of sale and shall be accompanied by a waiver of confidentiality signed by the farmer, and a fifteen-dollar fee. The waiver of confidentiality and the certified request may be combined and submitted as one document. If the financial institution states in its memorandum that the farmer has a sufficient net worth or line of credit to assure payment of the purchase price, the memorandum is an irrevocable and unconditional letter of credit to the benefit of the agricultural supply dealer for a period of thirty days following the date on which the final payment is due for the amount of the purchase price which remains unpaid. If the financial institution does not state in its memorandum that the farmer has a sufficient net worth or line of credit to assure payment of the purchase price, the financial institution shall transmit the relevant financial history which it holds on the person. This financial history shall remain confidential between the financial institution, the agricultural supply dealer, and the farmer.

2. If within four business days of receipt of a certified request a financial institution fails to issue a memorandum upon the request of an agricultural supply dealer and the request from the agricultural supply dealer was proper under subsection 1, or if the memorandum from the financial institution is incomplete, or if the memorandum from the financial institution states that the farmer does not have a sufficient net worth or line of credit to assure payment of the purchase price, the agricultural supply dealer may decide to make the sale and secure the lien provided in section 570A.3.

3. Upon an action to enforce a lien secured under section 570A.3 against the interest of a financial institution secured to the same collateral as that of the lien, it shall be an affirmative defense to a financial institution and complete proof of the superior priority of the financial institution's lien that the financial institution either did not receive a certified request and a waiver signed by the farmer, or received the request and a waiver signed by the farmer and provided the full and complete relevant financial history which it held on the farmer making the purchase from the agricultural supply dealer on which the lien is based and that financial history reasonably indicated that the farmer did not have a sufficient net worth or line of credit to assure payment of the purchase price."

Cases:

a. *Oyens Feed & Supply, Inc. v. Primebank,* 808 N.W.2d 186 (Iowa 2011) The disagreement among the various Iowa and federal courts on the correct interpretation of Iowa's feed lien law has been settled by the Iowa Supreme Court. In this case of major importance to feed suppliers and lenders as well as livestock producers, the Supreme Court ruled on Dec. 30, 2011, that that the feed lien is superior to the secured lender's security interest even though a certified notice of the feed lien is not sent to the lender.

Background – Iowa's feed lien law and conflicting court decisions. The Oyens case was referred to the Iowa Supreme Court by the federal district court for the Northern District of Iowa for a definitive ruling on the priority of the liens. This referral was necessary because Iowa and federal courts have issued conflicting rulings on the priority of feed supplier liens vs. a lender's security interest in a producer's livestock.

To briefly recap the problem, Iowa Code Chapter 570A provides a lien to businesses that sell ag supplies such as fertilizer, pesticides, seed, feed or petroleum products used for an ag purpose. This lien must be filed with the Iowa Secretary of State within 31 days after the farmer purchases the ag supply. The dispute centers on §570A.2 which provides that the supplier is to send a certified letter to the farmer's lender. The lender must then respond whether the farmer has sufficient finances to assure payment of the ag supply and provide a full and complete relevant financial history. This section states that a supplier who sells an ag supply and files an ag supply lien will lose to the lender's lien if the lender either did not receive the certified letter or received the letter and responded, along with the necessary financial history, that the farmer did not have sufficient finances to cover the price of the ag supply. If the lender responded that the farmer had sufficient finances, the ag supplier and the lender have equal priority under their liens. However, §570A.5(3) states that for feed, the ag supplier will have priority (not just equal priority) in livestock sales proceeds for the difference between the livestock's purchase price and the greater of the value of the livestock when the feed was sold or the livestock's sales price (this difference was labeled as "new value" created by the feed supplier). This section does not specifically refer to the section of the law requiring a certified notice be sent to the lender. Because of this omission, the analysis is that for a lien for feed, unlike a lien for other ag supplies, the supplier is not required to send a certified letter to the lender.

In all of the court decisions, the feed suppliers properly filed their liens with the Iowa Secretary of State but did not send a certified notice to the bank. The judges then had to determine who had priority: the banks because they did not receive the certified notice or the feed supplier because the section of the law on feed liens does not specifically refer to the certified notice requirement.

Iowa Supreme Court Settles the Conflict. With this background, the Iowa Supreme Court first noted that Iowa legislature intended to give feed suppliers more protection than sellers of seed, chemicals, and petroleum because the legislature in writing the feed lien portion of the law did not specifically reference the certified letter requirement as was done for the lien for seed, chemicals and petroleum. The Supreme Court ruled that if the certified letter sections of the law were intended to apply to feed liens, the legislature "would have expressly said so as it did" for the other ag supply liens. The Court went on to note that the certified letter requirement was in a more general section of

Chapter 570A (§570A.2) and the section specific to feed liens (§570A.5(3)) did not contain the certified letter requirement. The Court relied on the time-honored principle that when there is a conflict between specific and general statutes, the specific controls over the general.

> The Court summed up its decision with the following analysis:
> "It makes sense the legislature would give superpriority status to livestock feed suppliers limited to the new value created, without requiring compliance with the certified request procedure. Livestock feed is often supplied on an ongoing basis, and it would be impractical and cumbersome to require serial certified requests with ever changing dollar amounts and recurring fees. Livestock feed is grown and sold by farmers. The legislature presumably sought to encourage a fluid feed market without burdening cooperatives and farmers with the certified request process. By contrast, sales of crop seed, herbicides, and fertilizer are more often bulk transactions by large vendors for whom the certified request process is less cumbersome.
>
> Importantly, the superpriority provision only allows feed suppliers to trump perfected secured lenders to the extent the acquisition value of the livestock is exceeded by the livestock's value at the time the lien attaches or its ultimate sale price. Accordingly, the secured lender generally retains its secured position up to the livestock's acquisition price. The feed supplier's superpriority corresponds to the livestock's increase in value that typically results from consuming feed. The legislature reasonably could conclude the feed supplier who made the credit sale, not the secured lender, should be entitled to superpriority in this new value. This interpretation furthers the legislature's goal to encourage feed sales to livestock producers already burdened with bank debt."

Subsequent proceedings: Iowa Supreme Court Answers Certified Questions. On May 27, 2016, the Iowa Supreme Court responded to two certified questions which arose from the federal district court case of *Oyens Feed & Supply Inc. v. Primebank, 2015 U.S. Dist. LEXIS 58482 (N.D. Iowa May 5, 2015).* This dispute arose through the hog producer's Ch. 12 bankruptcy. See *In re Crooked Creek Corp.,* No. 09-02352S, 2014 Bankr. LEXIS 4456 (Bankr. N.D. Iowa Oct. 21, 2014). After the hog producer filed for bankruptcy, the hogs were sold, but the sale did not general enough money to satisfy the competing liens asserted by Oyens Feed & Supply and Primebank.

Certified Question Number One: Pursuant to Iowa Code §570A.4(2), is an agricultural supply dealer required to file a new financing statement every thirty-one (31) days in order to maintain perfection of its agricultural supply dealer's lien as to feed supplied within the preceding thirty-one (31) day period?

The Iowa Supreme Court held that, yes, an ag supply dealer in feed must file a new financing statement every 31 days to maintain perfection of its lien as to the feed sold within the preceding 31-day period. The Court concluded that §570A.4 is ambiguous and proceeded to apply rules of statutory construction to resolve the ambiguity. Iowa Code §570A.4 expressly incorporates Iowa Code §554.9308. The court further concluded that the language of §570A.4 conflicts with the language of §554.9308 and "within thirty-one days after" creates a rule that is specific to ag supply dealer liens and that modifies the general agricultural lien rule. The court also looked to the legislative history of Ch. 570A and

concluded that Ch. 570A was a "compromise between the interests of ag supply dealers and financial institutions and the requirement of filing every 31 days is "fairly… considered as a reasonable exchange for the super-priority status the filing helps to acquire."

Certified Question Number Two: Pursuant to Iowa Code §570A.5(3), is the "acquisition price" zero when the livestock are born in the farmer's facility?

The Iowa Supreme Court held that, yes, the acquisition price for animals raised in a farrow to finish operation is zero. Thus, an ag supply dealer of feed in Iowa is entitled to super-priority position against other creditors to the full extent of the value of the feed purchased – as long as they file financing statements every 31 days.

The end result, after the Iowa Supreme Court's answers to the certified questions above, means that while the bank has a secured claim, it will collect after the feed dealer collects on its super-priority claim. See *Oyens Feed & Supply, Inc. v. Primebank*, 879 N.W.2d 853 (Iowa Sup. Ct., May 27, 2016).

b. *In Re Coastal Plains Pork, LLC, First National Bank of Omaha v. Farmers Co-Operative Society and Cooperative Elevator Association, No.09-08367-8-RDD, 2012 Bankr. LEXIS 5784 (Bankr. E.D. N.C. Dec. 17, 2012).* In this adversary proceeding the court considered cross motions for summary judgment on the issue of the extent of the feed supplier's lien relative to the secured lender's security interest. The Court found genuine issues of material fact as to the extent of the feed supplier's liens for feed provided. The Court noted:

> "The only interpretation this Court can draw from §570A.5(3) and the *Oyens* opinion is that the Iowa Supreme Court intended the lien to encompass the benefit received by the hogs from the livestock feed eaten and not paid for. It is not clear to this Court that the formula in the statute accomplishes what Oyens states is the purpose, to wit: superpriority is intended to correspond to the livestock's increase in value that typically results from consuming the feed.[13]" Footnote 13 provides: "The legislature's formula only works in the simplest of examples. For instance, acquired hogs are purchased at a set purchase price from a third party and are only fed feed that is unpaid for until the hogs are sold. If the hogs are also fed feed that is paid for during the period, the formula does not work to accomplish the purpose set forth by the Iowa Supreme Court. The computation problem is exacerbated if hogs ingest feed from another supplier during this period of time from acquisition to ultimate sale. It is not clear from the affidavits whether Coastal Plains purchased and paid for the other feed from other suppliers during this time period. If so, it would seem the statute should provide for some percentage allocation of increased value based on feed supplied by different feed suppliers."

In addition, the Court ruled that under Chapter 570A the feed dealer's feed lien also covered charges for labor and delivery, including fuel charges. The Court found genuine issues of material fact existed as to whether the feed dealer's lien extended to interest charges.

c. *In re Schley, 509 B.R. 901 (Bankr. N.D. Iowa Apr. 18, 2014).* The debtors ran a feeding-to-finish pig operation. A bank and Cooperative Credit Company had perfected security interests in the debtor's livestock and after acquired property.

A defendant feed supplier provided feed for many of the debtors' hogs and had a perfected Chapter 570A lien as to some of the feed it supplied. Before the debtors filed for Chapter 12 bankruptcy protection, they sold hogs, and the proceeds were placed into escrow pending resolution of the competing security interests and Chapter 570A feed lien. The security interest holders argued that the 570A feed lien did not extend to proceeds under the express terms of Chapter 570A and the Iowa UCC. The court ruled that applying the 570A lien only to the hogs themselves and not proceeds would not make sense in that it would provide little protection to the feed supplier and would discourage them from working with troubled farmers. *Id. at 913.* The court also noted that comment 9 to 554.9315 stated that Article 9 does not determine whether a lien extends to proceeds of farm products subject to an ag lien. The court also referenced the 2011 Minnesota district court ruling on motion for summary judgment in *United Prairie Bank v. Galva Holstein Ag, LLC,* that attachment is implied by 570A.4(3) in that this section refers to "the sale price of the livestock" to determine the amount or extent of the lien and the collateral must be converted to proceeds to determine the extent of the lien. *Id. at 914.*

d. *In re Big Sky Farms, 512 B.R. 212 (Bankr. N.D. Iowa Apr. 18, 2014).* In this case also involving contract finishing hogs and competing security interests and 570A liens, the court ruled that the super priority status of the 570A lien applies only to feed purchased within the 31 days preceding filing of financing statements as expressly set out in Chapter 570A. *Id. at 212 – 221.* The court also addressed the question is whether under 570A the feed dealer is required to apply payments made by the farmer during each 31 day lien period to feed purchased during those lien periods or if the dealer was correct in applying all payments to the oldest feed purchases, even though those purchases were unperfected by any feed lien. The court noted that neither 570A nor any other Iowa statute addresses the issue. The court ruled there since there was no explicit agreement between the parties as to how apply payments for feed on this open account, under Iowa common law the default rule is apply payments on open account to the oldest items first. *Id. at 221 – 223.* On this issue the court did not reference the *United Prairie Bank v. Galva Holstein Ag, LLC* case, but in that case on appeal the court ruled the same stating "[g]enerally, absent an agreement on the application of proceeds on an open account, the law applies payments as they are received to cancel the first-incurred debt." *United Prairie Bank v. Galva Holstein Ag, LLC, et. al., pp. 8-10 (Minn. Ct. App. 2013 WL 6223416)(unpublished opinion).*

e. *Schley v. Peoples Bank (In re Schley),* 565 B.R. 655, 2017 Bankr. LEXIS 115 (Bankr. N.D. Iowa Jan. 13, 2017). The court ruled that the Iowa Code Chapter 570A Ag Supply Dealers Lien for feed applied to all feed that the feed supplier provided and attached to the full value of livestock that consumed the feed. The secured lender had argued that the feed supplier had a lien pro rata on each head of hogs for the amount of feed the hog consumed.

Note: It is now settled law that Iowa's feed lien under Chapter 570A does not require a feed supplier to send a certified notice to a lender with a security interest in the livestock (the certified notice requirement remains for all other ag liens (seed, fertilizer, chemicals, and petroleum products)). The Iowa feed supplier's lien is superior to a lender's security interest if the feed supplier files a UCC-1 with the Iowa Secretary of State within 31 days after the feed is

purchased. In other words, each UCC-1 covers the previous 31 days of feed purchases and if feed is purchased beyond a 31 day period, another UCC-1 must be filed for the feed supplier to have priority for those feed purchases.

c. *Note: To address the priority of the 570A lien clarified by the Oyens, Schley, and Big Sky decisions, lenders may consider the following steps:*
   1) Loan conditions or covenants with livestock producer:
   2) Producer required to list all feed suppliers
   3) Require notice, subordination or waiver of feed lien by producer's feed suppliers
   4) Require producer to provide monthly feed bills to lender
   5) Lender adjust borrowing base based on any unpaid feed bills

   Note: Beyond the priority issue, there are other issues the practitioner representing a feed dealer or lender should be aware of:
   1) Tracing of proceeds (See discussion of Quality Plus Feeds, Inc. v. Compeer Fin., FLCA, 984 N.W.2d 437 (Iowa 2023) on page 2.
   2) Application of payments for feed on open account. One question is the treatment of cash payments for feed by a lender to a feed dealer holding a lien, after the dealer has demanded cash payments for feed due to a delinquent open account balance. This issue was addressed in United Prairie Bank v. Galva Holstein Ag, LLC, et. al., pp. 11-13 (Minn. Ct. App. 2013 WL 6223416)(unpublished opinion) The court found that the feed dealer had not agreed that the bank would have priority over its feed lien for money paid to the feed dealer for feed after the dealer demanded cash payment for feed. The court ruled that the district court was correct in that the feed dealer only preserved its lien as to feed supplied during the perfected periods and for which it was not paid. In addition, the court noted that this approach is consistent with the policy of feed suppliers and banks sharing the risk of continuing to feed livestock to market and with Chapter 570A's goal as interpreted in Oyens of "encouraging feed sales to livestock producer already burdened with bank debt."

m. Harvester's Lien, Chapter 571.
   i. A person "baling, chopping, combining, cutting, husking, picking, shelling, stacking, threshing, or windrowing a crop, regardless of the means or method employed" has a lien "for the reasonable value of harvesting services." A crop "includes but is not limited to corn, soybeans, hay, straw, and crops produced on trees, vines, or bushes." Iowa Code §571.1A and 1B.
   ii. The lien is effective when the harvesting services are rendered. Iowa Code §571.3(1).
   iii. The lien is perfected by filing a financing statement with the Secretary of State within 10 days after the last date the harvesting services were rendered. Iowa Code §571.3(2).
   iv. A timely perfected lien has priority over prior perfected security interests and Landlord's Liens. Iowa Code §571.3A(2).
   v. The lien may be enforced in the manner provided for ag liens in chapter 554, article 9, part 6." Iowa Code §571.5.

   Note: Unlike a financing statement perfecting a Landlord's Lien, an express statement that a Harvester's Lien is being perfected is not required.

   Kohn v. Muhr, No. 18-2059 (Iowa Ct. App. Nov. 30 2019).
   On November 27, 2019, the Iowa Court of Appeals ruled that a farmer who had solicited the services of a harvester was a "debtor" subject to a harvester lien because he was the person for whom the services were rendered. When a farmer did not have the ability to complete a custom farm agreement with his son, he

hired a harvester to help. After the farmer and his son failed to pay, the harvester filed a financing statement listing both the farmer and the son as debtors. The son eventually paid the harvester for his services. The harvester immediately terminated the financing statement.

The farmer filed suit against the harvester for wrongfully filing a financing statement, alleging that he did not qualify as a "debtor" which cause financial damage when his commodity contracts were involuntarily liquidated. The farmer claimed that he not the debtor he was merely acting as his son's agent

A harvester may file an agricultural lien against the person for whom they harvest. "[T]he person for whom the harvester renders such harvesting services is a debtor…" The court found that the farmer was a "person for whom the harvester render[ed]" and therefore fell within the meaning of "debtor" under the harvester lien statute. Additionally, the court found that the farmer hired the harvester and gave specific instructions on harvesting and delivering the grain. The farmer was not merely an agent representing his son's interests, but was more akin to a contractor hiring a subcontractor. Therefore, the farmer was a debtor for purposes of the harvester lien statute.

n. Veterinarian's Lien, Chapter 581.

(1) A veterinarian has a lien "for the actual and reasonable value of treating livestock, including the cost of any product used and the actual and reasonable value of any professional service rendered by the veterinarian." Iowa Code §581.2A.

(2) The lien is effective when the veterinarian treats the livestock. Iowa Code §581.3(1).

(3) The lien is perfected by filing a financing statement with the Secretary of State within 60 days after the day the veterinarian treats the livestock. Iowa Code §581.3(2).

(4) A timely perfected lien has priority over conflicting security interests or liens, regardless of when the security interest or lien is perfected. Iowa Code §581.2(2).

(5) The lien may be enforced in the manner provided for ag liens in chapter 554, article 9, part 6." Iowa Code §571.4.

Note: Unlike a financing statement perfecting a Landlord's Lien, an express statement that a Veterinarian's Lien is being perfected is not required.

n. Emergency care of livestock. Iowa Code Sections 717.3 -.6 (2011 Iowa Acts, ch 81, §10).

1) The Iowa Department of Agriculture & Land Stewardship (IDALS) is given authority to determine if livestock (swine, poultry, sheep and cattle) are in immediate need of sustenance (feed, water, or nutritional formulation customarily used in the production of livestock)

2) IDALS may file a petition with the district court where the livestock are located asking the court to issue an order finding that the livestock are in immediate need of sustenance, to provide sustenance to the livestock, and to sell or otherwise dispose of the livestock, if necessary.

3) The IDALS petition to the court must include, among other things:
   a. A statement signed by a veterinarian that the livestock are in immediate need of sustenance
   b. Name and address of the owner of the livestock, the person caring for the livestock if different from the owner, and anyone holding a lien or security interest in the livestock.
   c. Name and address of each person willing to provide sustenance

4) The court may notify the owner, the person caring for the livestock if different from the owner, and any lien or security interest holders that a petition has been filed. The court

may also hold a hearing to determine if the livestock are in immediate need of sustenance.

5) If the court finds the livestock are in immediate need of sustenance, the court shall issue an order declaring the livestock are in immediate need of sustenance and that IDALS shall take control of supervision of the livestock and provide for sustenance (IDALS may appoint a qualified person to provide for sustenance). The order shall also provide that IDALS (or the qualified person) has a lien in the livestock for the sustenance provided and any costs of disposing of the livestock. The lien shall have priority over any other lien, security interest, or legal interest in the livestock. The lien must be filed with Secretary of State as soon as practicable, but not later than within 20 days after entry of the court order.

6) If IDALS requests in the petition, the court may also order disposition of the livestock and hold a hearing using procedures currently in place in section 717.5 for other neglected livestock.

7) The Manure Storage Indemnity Fund previously in Chapter 459 under DNR control was renamed the "Livestock Remediation Fund" and IDALS now has authority to access money in the fund. DNR is required to allocate money to IDALS if necessary to pay for costs of sustenance and disposition of livestock as provided by the court order. Any money received by IDALS from the livestock less expenses is repaid to the Fund.

o. Enforcement.
   1. Provisions of each lien statute and Iowa Code section 554.9601 - 9624 (Art. 9, part 6)
   2. Practical issues with enforcement:
      a. Proper & timely perfection of the lien by filing UCC-1
      b. Default - negotiation with debtor (& other secured creditors)
      c. Notification to buyer of farm product subject to ag lien- voluntary, not required, but helpful in enforcement
      d. Sale of collateral to create proceeds – proceeds placed in escrow pending resolution of priority of competing security interests
      e. Negotiation and/or litigation to determine priority

VII. Alternative Energy Easement Agreements.

1. Wind and Solar Energy Agreements.

Similar to manure easements/application agreements, wind and solar energy agreements allow the use of land for a limited purpose while the landowner retains the use of the land for farming. Sometimes called leases, wind and solar energy agreements present both contract issues and land use issues. A landowner enters into an agreement to allow the construction and operation of solar panels or wind powered generation equipment on their land for payment.

As with any agreement, both parties must consider their own rights but also understand that the agreement must work for both parties, or there won't be a workable deal.

In addition to general contract, lease and easement issues, some of the major issues landowners should consider are:

a. One of the major issues is the location of the solar and wind equipment and how much land will be used by the developer. Agreements often give complete control over these matters to the developer. While this is understandable from a solar or wind energy production standpoint, landowners either need some control over the location and the amount of land, or a method of being compensated according to the type and amount of land being used by the developer. The

agreement should specify the type of equipment that will be installed, the exact location of the equipment, and the amount of land that will be used. Points of ingress and egress should be clearly agreed to before signing the agreement. Some agreements give the landowner authority to approve the final site plan for location of turbines and other equipment and allow the agreement to terminate if the landowner rejects the developer's site plan.

b. Negotiation as a group. Unlike many contractual arrangements, solar and wind energy agreements depend upon a minimum level of interest and participation by landowners in a geographic area. Thus, if landowners in that area negotiate payment and other contractual terms as a group, their negotiating power is greatly increased.
c. Legal fees. Landowners may be able to negotiate for payment of their legal fees by the developer for reviewing and negotiating the terms of the agreement. Of course, the attorney in this situation must be mindful of the ethical implications.
d. The length of the agreement. Some agreements are for very long periods of time, some approaching perpetual. Other agreements are for 10 to 30 year periods. Obviously, landowners need to be very careful in entering long term agreements unless they have reasonable rights of termination and/or payment escalator provisions. In addition to the length of the agreement, any rights of extension of the term by either party unilaterally must be carefully evaluated. .
e. If the feasibility of wind energy in an area is not known, a developer may ask for an option for access to the property to investigate the feasibility of constructing wind turbines. This may be a separate agreement or included in the lease/agreement itself. The terms of this option are critical so that the landowner is not tied up in the option and prevented from exploring an agreement with another company if the holder of the option does not proceed.
f. Is the agreement contingent upon the developer obtaining a minimum number of acres in the area? If so, landowners may want a clause limiting the amount of time the developer has to obtain the minimum number of acres.
g. Do the access easements for underground cables, etc. continue even if no solar panels or wind turbines are placed on the land? Most landowners don't want the disruption to their land and crops unless they get the economic benefit of solar panels or wind turbines.
h. The form and methods of payment vary from fixed rate (per turbine, per acre of land used, or per acre of land subject to the agreement) to a combination of fixed payments and variable payments based on the production of wind energy. Some agreements also include payments for lineal feet of cable that is on the landowner's property. If so, make sure the agreement is clear as to whether the payment is for each individual cable or if it is the same per foot no matter how many cables are in the same trench. Remember, relatively small changes in the terms of variable payments based on production can result in large differences in the amount of payment over the life of the agreement.
i. Landowners should consider a "most favored nation" clause that provides that the developer must offer any more favorable terms to the landowner that may be subsequently offered to other landowners in the project area. Also, landowners may want to request a first right of refusal clause if a competing developer offers an agreement with better terms to landowners in the project area.
j. For long term agreements, landowners should strongly consider a term for increasing the payment at various stages in the term of the agreement. Examples include a "reopener" clause, a CPI adjustment clause, or escalator clauses based on revenue from the solar panels or turbines. Any time period to determine a payment adjustment clause should begin when the agreement begins, not a later date such as when energy is begun to be produced.
k. Does the agreement restrict a landowner's use of the property to certain uses, such as agricultural and therefore prohibit construction of residences, etc.? Most agreements prohibit the landowner from obstructing the operation of the solar panels or wind turbines. While this is understandable from the developer's perspective, landowners must carefully evaluate how this may affect the future use of their property for agricultural and other uses. These non-obstruction covenants in an

agreement make knowing where the solar panels or wind turbines will be located very important to the landowner.

l. Compensatory payments to landowner. Payment for crop damage, tile line damage, fence repair or replacement, or other damage to the land during exploration, construction and any future activities on the property. The developer must be required to replace all topsoil on land disturbed during construction but which can be farmed after construction. A clause should be included that covers how the loss of any federal farm program payments will be handled.

m. What rights does either party, particularly the developer, have to terminate the agreement? Landowners should consider a clause allowing them to terminate the agreement if no turbines are built within a reasonable amount of time. If the agreement includes a force majeure clause in favor of the developer, landowners should negotiate for the clause to not apply to the developer's non-monetary obligations and require the developer to continue to pay any minimum payments under the agreement.

n. Is the landowner prohibited from entering into agreements with other companies on other parcels of land? Some agreements expressly allow landowners to have their own turbines for personal energy needs.

o. Does the agreement address the filing of mechanics liens?

p. Have mortgage holders, contract vendors, or other lien holders been made aware of and consented to the agreement? Does the developer require nondisturbance agreements?

q. Does the agreement require the developer to remove all equipment and return all land to a farmable condition upon termination of the agreement? Some agreements only require the developer to remove below ground concrete or other construction materials to a certain depth and not all of the concrete, etc.

r. The agreement should require the developer to post a bond or any other type of financial assurance that will be available to the landowner for returning the land to a farmable condition upon termination of the agreement. Many developers want to delay the posting of this bond until later in the term of the agreement. Landowners should negotiate for posting of this bond as early in the agreement as possible, preferably no later than the tenth year of a long term agreement. The landowner should also address priorities to that bond payment vs. secured lenders.

s. Does the agreement address potential liabilities of each party for actions such as nuisance lawsuits?

t. Can either party, particularly the developer, assign the agreement? If so, landowners should be careful of and/or be aware of potential assignment to a developer's affiliated entities that may not be as financially sound as the developer. Landowners need to consider how the agreement will be affected by any transfer of their land.

u. Does county zoning or other county regulation apply to the solar or wind equipment?

v. Many agreements require that the terms be kept confidential. Landowners may want to negotiate to have such clauses removed, or at least made less restrictive. Landowners must be aware of the requirements of the confidentiality clauses to avoid violation.

w. Who is liable for property taxes on the solar or wind energy equipment and improvements?

x. Who is responsible for insurance, both property casualty and liability?

2. Carbon Pipeline Easement Agreements.

Agricultural landowners who wish to voluntarily enter into an easement for the construction of an underground carbon pipeline on their property should consider a number of factors. Depending on the type of pipeline, Iowa and federal law provide many protections to ag landowners. However, landowners may negotiate for protections and terms to supplement the available legal protections. In addition, stating all protections in an easement agreement, even those covered by law, helps landowners to make sure they are protected and are aware of those protections.

1. Grant of Easement.
    a. Pipeline Easement
        i. Width.
        ii. Pipeline
        iii. Depth
        iv. Size and number.
        v. Marking.
        vi. Substances.
    b. Temporary Construction/Workspace Easement
    c. Access Easement.
2. Location of Easements
3. Pipeline Company Rights.
    a. Facilities to be constructed.
4. Landowner's Retained Rights.
    a. Use of easement area after pipeline installed.
5. Damages
    a. Crop
6. Restoration
    a. Soil.
    b. Drainage.
    c. Fences
    d. Limitations on restoration.
    e. Restoration costs limited.
7. Easement Cancellation/Abandonment
8. Tenants
9. Payment
    a. Easement
    b. Crop damages.
10. Additional Provisions.
    a. Legal fees and other Landowner costs.
    b. "Most favored nation" clause.
    c. Bond.
11. General comments.
    a. Contractors.
    b. County Inspectors.

Cases:

a. *Mathis v. Palo Alto Co. Board of Supervisors*, No. 18-1431 (Iowa Ct. App. May 3, 2019). County wind energy county ordinance amendment not arbitrary and capricious.

b. *Woods v. Fayette Cty. Zoning Bd. of Adjustment*, 913 N.W.2d 275 (Iowa App. 2018).
    i. A wind group applied to the Fayette Cty. Bd. of Adjustment for special use permits to construct three wind turbines. The Board denied the application.
    ii. The county attorney determined from interpretation of the county's zoning ordinance that the wind turbines would qualify as "electrical transmission and regulating facilities" so as to exempt them from the need for a special use permit. The county administrator approved this interpretation and approved the applications. The City of Fairbank appealed the approval and the Board denied the appeal.
    iii. District court declared the approvals of the applications as "illegal and void," found that a wind turbine was "not an electrical transmission and regulating facility" within the meaning of the zoning ordinance and further directed the wind group to remove the structures.

iv. Iowa Court of Appeals affirmed the district court that a wind turbine that produces electricity is not an electrical transmission and regulating facility.

VIII. Corporate Farming Law and Non-Resident Alien Ownership of Ag Land.

1. Iowa Code Chapter 9H - Restriction on Ownership of Agricultural Land by Legal Entities.

a. Restriction**.** Except as provided in ¶b, a corporation, limited liability company, trust, or limited partnership (including limited liability limited partnerships) cannot, either directly or indirectly, acquire or otherwise obtain or lease agricultural land in Iowa.

Indirectly owning or leasing ag land means for an individual to own land through an interest in a business association, through one or more affiliates or intermediaries, or by any method other than a direct approach.

b. Exceptions. Legal entities that can own or lease ag land in Iowa (entities that can only own or lease ag land for livestock production are not included in this list, see Iowa Code Chapter 10) if they meet certain restrictions under Iowa Code Chapter 9H are:
   i. Family farm corporation (See ¶c)
   ii. Family farm limited liability company. (See ¶c)
   iii. Family farm limited partnership. (See ¶c)
   iv. Family trust. (See ¶c)
   v. Revocable trust. (See ¶d)
   vi. Testamentary trust. (See ¶e)
   vii. Authorized farm corporation. (See ¶e)
   viii. Authorized limited liability company. (See ¶e)
   ix. Authorized trust. (See ¶e)
   x. Limited partnership. (See ¶f)
   xi. Limited liability limited partnership. (See ¶f)
   xii. Nonprofit corporation (formed under Iowa law)

Legal ownership structures/entities that can own or lease ag land in Iowa because they are not directly regulated under Chapter 9H are:
   xiii. General partnership. (See ¶g)
   xiv. Limited liability partnership. (See ¶g)
   xv. Individuals/sole proprietorship. (See ¶h)
   xvi. Individuals/tenants in common. (See ¶h)

c. Family farm corporations, LLC's, LP's and trusts. Family farm entities (i, ii, iii, and iv in ¶b) must:
   i. Be founded for the purpose of farming and the ownership of ag land
   ii. For family farm corporations, have a majority of voting investors that are related to each other as spouse, parent, grandparent, lineal ascendants of grandparents or their spouses and other lineal descendants of the grandparents or their spouses, or persons acting in a fiduciary capacity (trustee, etc.) for the related persons. For family farm LLC's, have a majority of members who are these persons. For family farm limited partnerships, have a majority of limited partners who are these persons. For family trusts, have a majority of the beneficiaries who are these persons.
   iii. For family farm corporations, have a majority of the voting stock held by persons listed in ¶c,ii. There is no such requirement for family farm LLC's. For family farm limited

partnerships, the general partner and a majority of the partnership interests must be held by these persons. For family trusts, have a majority of the interest in the trust held by these persons.

iv. Have all investors who are natural persons (i.e., no legal entities as investors)(for family farm limited partnerships, all limited partners must be natural persons & the general partner must manage and supervise the day-to-day farming operations).

v. 60% of the gross revenues over the last consecutive 3 year period must be from farming. (Newly formed entities must only meet this requirement going forward.)

d. Revocable and testamentary trusts. Revocable trusts (a trust that the grantor can amend, modify or revoke at any time before death) and testamentary trusts (a trust created at death in a will) may own or lease ag land. There are no restrictions on beneficiaries, trust income, family relationship of beneficiaries, etc.

e. Authorized corps, LLC's, and trusts. Authorized entities (g, h, and i in ¶2) (entities that do not qualify as family entities) must:

i. Be founded for the purpose of farming and the ownership of ag land (this does not apply to trusts)

ii. Have no more than 25 investors

iii. Have all investors who are natural persons.

iv. For authorized trusts, not have income which is federal or state tax exempt.

v. Own or lease no more than 1,500 acres of ag land.

vi. Have investors who are not investors in any other authorized entity or limited partnership (other than a family farm limited partnership)(the "one bite at the apple" rule).

(an entity meeting these requirements is an authorized entity by definition and no other steps or certifications from the state are required)

(a person who is not an investor but provides management services to an authorized entity is not subject to these restrictions)

(An authorized entity found in violation of the "one bite at the apple" rule is subject to a civil penalty of not more than $25,000 and divestment of land held in violation within one year after a court order. To get a court order, the attorney general or a county attorney may file a lawsuit. In addition to these penalties, the attorney general or a county attorney may petition the court to order an entity to restructure to prevent or correct violations. In addition, an investor who causes a violation of this section is subject to a civil penalty of not more than $1,000 and divestment of the investment interest. Any financial gain realized upon divestment must be forfeited to the state.)

f. LP's and LLLP's. Limited partnerships and limited liability limited partnerships (x and xi in ¶b)(other than family farm limited partnerships) must, among other requirements:

i. Own or lease no more than 1,500 acres of ag land

ii. Not have an investor who does not qualify to own or lease ag land (the indirect prohibition).

iii. Not have limited partner investors who are investors in any other authorized entity or limited partnership (other than a family farm limited partnership)(general partners are not subject to this requirement, therefore, a person may be a general partner in more than one LP).

g. GP's and LLP's. General partnerships and limited liability partnerships (l and m under ¶b) are not expressly regulated by Iowa Code Chapter 9H. Therefore, requirements such as the 1,500 acre limitation, the 25 investor limit, the requirement that all investors be natural persons, or the requirement that investors not be investors in more than one authorized entity or limited partnership do not apply. However, the following restriction does apply:

   i. Not have an investor who does not qualify to own or lease ag land (the indirect prohibition). Therefore, investors in a GP or LLP can be individuals, family farm entities (see ¶c), authorized entities (see ¶e), LP's and LLLP's (those that meet the requirements in ¶f), nonprofit corporations, or other GP's or LLP's (those that meet the requirements of this ¶g).

h. Sole proprietors and tenants in common. Individuals are not regulated by Iowa Code Chapter 9H. Thus, individuals acting as sole proprietors or as tenants in common may own ag land without restrictions. Note that Iowa law does restrict ownership or leasing of ag land by foreign individuals and businesses. See discussion in the next section of this outline.

i. Development land. Any legal entity (corporation, limited liability company, limited partnership, etc.) may acquire ag land for immediate or potential use in non-farming purposes without restrictions under Iowa law. There is no limit under Iowa law on the amount of land or the time to convert the ag land to a non-farm use.

j. Foreclosure. A corporation or limited liability company may acquire ag land by foreclosure or other "process of law in the collection of debts" without restrictions under Iowa Code Chapter 9H. Under this exemption there is no time limit on how long a foreclosing lender may possess the ag land after taking possession, nor any restrictions on the lender farming or otherwise utilizing the ag land for agricultural purposes. Although there is no time limit on possessing ag land after acquiring it in enforcement of a mortgage or other lien under Iowa Code Chapter 9H, Iowa Code §524.910(2) regulating state banks provides that real property purchased by a state bank at a foreclosure sale, or acquired for judgments for outstanding debt, or real property conveyed to the bank in satisfaction of debt, or real property obtained through redemption as a junior mortgagee or judgment creditor, "shall be sold or otherwise disposed of by the state bank within five years after title is vested in the state bank, unless the time is extended by the superintendent."

k. Federal farm program payments. The federal Farm Bill provides that a person or legal entity is not eligible to receive:

   i. Commodity program payments, if the average adjusted gross income (AGI) from nonfarm sources is more than $500,000.
   ii. Direct payments if the AGI from farming, ranching, and forestry is more than $750,000.
   iii. Conservation program benefits or payments, if the AGI from nonfarm sources is more than $1,000,000, unless not less than 66.66% of the AGI of the person or legal entity is average adjusted gross farm income or this limitation is waived on a case-by-case basis by the FSA or NRCS.

   Average AGI is determined using a 3 year average. These income limitations apply to direct and indirect receipt of farm program payments. Any program payment received by a legal entity, general partnership or joint venture will be reduced by an amount commensurate with the direct and indirect ownership interest in the entity, partnership or joint venture of each ineligible person

or entity. In other words, if a member in an LLC is ineligible, the payment to the LLC will be reduced according to the share of the ineligible member. If a landowner cash rents land and the tenant receives all of the program payments, the tenant but not the landowner must meet the income limitations.

l. IRA's. In general, investment of IRA contributions in ag land is permissible under federal income tax law and Iowa corporate farming law, but it is discouraged by some tax advisors. The income tax concerns are beyond the scope of this outline but are fully covered in Dr. Neil Harl's article, "Is It Possible (or Wise) to Put Farmland in an IRA?" Agricultural Law Digest, July 2, 2010.

Retirement plans such as 401K's and SEP's, including solo plans, are trusts in that there is a plan administrator that acts as a fiduciary/trustee on behalf of the plan beneficiaries. Iowa law regulates the ownership of ag land by trusts under Iowa Code Chapter 9H similar to other legal entities. See ¶'s c, d and e. Authorized trusts must not have any federal or state tax exempt income. However, there is no such requirement for family trusts. Because IRA income is both state and federal tax exempt, IRA's that are authorized trusts cannot own or lease ag land in Iowa. However, IRA's that qualify as family trusts can own ag land under Chapter 9H if, in addition to meeting the natural person and family relationship tests, the IRA also is established for the purpose of farming and at least 60% of gross revenues over the last consecutive three year period come from farming.

Summary:

- Under current Iowa corporate farming law, LLP's are not directly regulated and therefore offer the most flexibility for investor ownership of ag land. See ¶g.
- Ag land purchased for development (non-ag use) is exempt from Iowa corporate farming law restrictions and there is no limit on the amount of land or the time to convert the ag land to a non-farm use. See ¶i.
- LLC's are often used instead of corporations due to income tax advantages. As set out in ¶'s c and e, LLC's are regulated essentially the same as corporations for ag land ownership. An LLC in which less than a majority of the investors are related (authorized LLC) can own or lease ag land if the requirements in ¶e are met (e.g., no more than 25 natural person investors, individual investors can only be in one authorized LLC ("one bite at the apple"), and the LLC cannot own more than 1,500 acres of ag land). The most difficult restriction is usually the "one bite at the apple". Keep in mind that an investor can invest in one or more family farm entities as well as LLP's and still invest in an authorized entity. In other words, the "one bite at the apple" rule only applies to authorized entities and limited partners in LP's that are not family farm LP's.
- Individuals are not regulated by under the corporate farming law and therefore individuals acting as sole proprietors or as tenants in common may own ag land without restrictions. See ¶h. Accordingly, owning land directly as tenants in common gives the most flexibility looking solely at Iowa corporate farming law.
- Entities that qualify to own ag land directly can do so as a tenant in common. Family farm entities would not be restricted by the "one bite at the apple" rule.
- Entities who violate Chapter 9H are subject to a civil penalty of not more than $25,000 and divestment of land held in violation within one year after a court order. The attorney general or a county attorney may also petition the court to order an entity to restructure to prevent or correct violations. An investor who causes a violation of the "one bite at the apple' rule is subject to a civil penalty of not more than $1,000 and divestment of the investment interest. Any financial gain realized upon divestment must be forfeited to the state.

2. Iowa Code Chapter 9I – Non-resident Aliens – Ag Land Ownership

a) "A nonresident alien, foreign business or foreign government, or an agent, trustee or fiduciary thereof, shall not purchase or otherwise acquire agricultural land in this state. A nonresident alien, foreign business or foreign government, or an agent, trustee or fiduciary thereof, which owns or holds agricultural land in this state on January 1, 1980, may continue to own or hold the land, but shall not purchase or otherwise acquire additional agricultural land in this state." Iowa Code section 9I.3(1)

b) "A person who acquires agricultural land in violation of this chapter or who fails to convert the land to the purpose other than farming within five years, as provided for in this chapter, remains in violation of this chapter for as long as the person holds an interest in the land." Iowa Code section 9I.3(2).

c) " 'Nonresident alien' means an individual who is not any of the following:
- A citizen of the United States.
- A person lawfully admitted into the United States for permanent residence by the United States immigration and naturalization service. An individual is lawfully admitted for permanent residence regardless of whether the individual's lawful permanent resident status is conditional." Iowa Code section 9I.1(5).

Note: The definition of "nonresident alien" was amended in the 2002 Legislative session (SF 2272). Prior to amendment, a nonresident alien was any person who was not a U.S. citizen or who had not been classified as a "permanent resident alien" by the U.S. Immigration & Naturalization Service. Following amendment, any person lawfully admitted into the U.S. for permanent residence by INS is not considered to be a nonresident alien regardless of whether the lawful permanent resident status is conditional.

d) 'Foreign business' means a corporation incorporated under the laws of a foreign country, or a business entity whether or not incorporated, in which a majority interest is owned directly or indirectly by nonresident aliens. Legal entities, including but not limited to trusts, holding companies, multiple corporations and other business arrangements, do not affect the determination of ownership or control of a foreign business." Iowa Code section 9I.1(3).

e) " 'Agricultural land' means land suitable for use in farming."
" 'Farming' means the cultivation of land for the production of agricultural crops, the raising of poultry, the production of eggs, the production of milk, the production of fruit or other horticultural crops, grazing or the production of livestock. Farming includes the production of timber, forest products, nursery products, or sod. Farming does not include a contract where a processor or distributor of farm products or supplies provides spraying, harvesting or other farm services." Iowa Code sections 9I.1(1) and (2).

f) Exceptions:
1) Ag land acquired by devise or descent. Iowa Code section 9I.3(3)(a). A nonresident alien, foreign business, etc. which acquires ag land by devise or descent after January 1, 1980, must divest all right, title and interest in the land within 2 years after acquisition. Divestment is not required if the land was originally acquired by a nonresident alien prior to July 1, 1979. Iowa Code section 9I.5.
2) A bona fide encumbrance on ag land taken for purposes of security. Iowa Code section 9I.3(3)(b).
3) "Agricultural land acquired by a process of law in the collection of debts, by a deed in lieu of foreclosure, pursuant to a forfeiture of a contract for deed, or by any procedure for the

enforcement of a lien or claim on the land, whether created by mortgage or otherwise. However, agricultural land so acquired shall be sold or otherwise disposed of within two years after title is transferred. Pending the sale or disposition, the land shall not be used for any purpose other than farming, and the land shall not be used for farming except under lease to an individual, trust, corporation, partnership or other business entity not subject to the restriction on the increase in agricultural land holdings imposed by section 9H.4. Agricultural land which has been acquired pursuant to this paragraph shall not be acquired or utilized by the nonresident alien, foreign business, or foreign government, or an agent, trustee, or fiduciary thereof, under either paragraph "d" or paragraph "e"." Iowa Code section 9I.3(3)(c).

4) Ag land acquired for research or experimental purposes. Iowa Code section 9I.3(3)(d). Lessees of ag land for research or experimental purposes under 9I.(3)(d)(3)(land used for the primary purpose of testing, developing, or producing animals for sale or resale to farmers as breeding stock) must file an annual report with the Secretary of State on or before March 31 each year.
5) An interest in ag land, not more than 320 acres, acquired for an immediate or pending use other than farming. Iowa Code section 9I.3(3)(e). A report must be filed with the Secretary of State before March 31 of each year. Iowa Code section 9I.8. The land must be converted to a purpose other than farming within 5 years after acquisition. Iowa Code section 9I.4.
If a person or business holding ag land becomes a nonresident alien or foreign business, the person must divest interest in the land within 2 years. Iowa Code section 9I.6 .

g) A nonresident alien, foreign business, etc. owning ag land on or after January 1, 1980 must register the land with the Secretary of State. Iowa Code section 9I.7.

h) The Iowa Attorney General has enforcement authority after receiving a report of a violation from the Secretary of State. Iowa Code section 9I.10 .

i) Penalties.
   a. Failure to timely file reports or registration: fine of not more than $2,000 for each offense.
   b. Escheat: "If the court finds that the land in question has been acquired in violation of this chapter or that the land has not been converted to the purpose other than farming within five years as provided for in this chapter, the court shall declare the land escheated to the state. When escheat is decreed by the court, the clerk of court shall notify the governor that the title to the real estate is vested in the state by decree of the court. Any real estate, the title to which is acquired by the state under this chapter, shall be sold in the manner provided by law for the foreclosure of a mortgage on real estate for default of payment, the proceeds of the sale shall be used to pay court costs, and the remaining funds, if any, shall be paid to the person divested of the property but only in an amount not exceeding the actual cost paid by the person for that property. Proceeds remaining after the payment of court costs and the payment to the person divested of the property shall become a part of the funds of the county or counties in which the land is located, in proportion to the part of the land in each county." Iowa Code section 9I.11.

3. Agriculture Foreign Investment Disclosure Act of 1978 (AFIDA).

The Agricultural Foreign Investment Disclosure Act (AFIDA) became law in late 1978. The regulations, 7 CFR Part 781, Disclosure of Foreign Investment in Agricultural Land were created to implement the AFIDA. In particular, they were created to establish a nationwide system for the collection of information pertaining to foreign ownership in U.S. agricultural land. The regulations require foreign investors who acquire, transfer or hold an interest in U.S. agricultural land to report such holdings and transactions to the Secretary of Agriculture on an AFIDA Report Form FSA-153.

The data gained from these disclosures is used in the preparation of periodic reports to the President and Congress concerning the effect of such holdings upon family farms and rural communities. https://www.fsa.usda.gov/programs-and-services/economic-and-policy-analysis/afida/index

7 CFR 781.2(b)
"Agricultural land. Agricultural land means land in the United States used for forestry production and land in the United States currently used for, or, if currently idle, land last used within the past five years, for farming, ranching, or timber production, except land not exceeding ten acres in the aggregate, if the annual gross receipts from the sale of the farm, ranch, or timber products produced thereon do not exceed $1,000. Farming, ranching, or timber production includes, but is not limited to, activities set forth in the Standard Industrial Classification Manual (1987), Division A, exclusive of industry numbers 0711-0783, 0851, and 0912-0919 which cover animal trapping, game management, hunting carried on as a business enterprise, trapping carried on as a business enterprise, and wildlife management. Land used for forestry production means, land exceeding 10 acres in which 10 percent is stocked by trees of any size, including land that formerly had such tree cover and that will be naturally or artificially regenerated."

"§ 781.3 Reporting requirements.
(a) All reports required to be filed pursuant to this part shall be filed with the FSA County office in the county where the land with respect to which such report must be filed is located or where the FSA County office administering programs carried out on such land is located; Provided, that the FSA office in Washington, DC, may grant permission to foreign persons to file reports directly with its Washington office when complex filings are involved, such as where the land being reported is located in more than one county.

(b) Any foreign person who held, holds, acquires, or transfers any interest in United States agricultural land is subject to the requirement of filing a report on form FSA-153 by the following dates:
. . .
(2) Ninety days after the date of acquisition or transfer of the interest in the agricultural land, if the interest was acquired or transferred on or after February 2, 1979.
. . ."

IX. Farm Tenancies.

1) Farm leases are created by contract as with other tenancies. However, Iowa law provides that the termination date for farm tenancies must be March 1 in the year the lease terminates. See Iowa Code § 562.5 which provides:

   "In the case of a farm tenancy, the notice must fix the termination of the farm tenancy to take place on the first day of March, except in cases of a mere cropper, whose farm tenancy shall terminate when the crop is harvested. However, if the crop is corn, the termination shall not be later than the first day of December, unless otherwise agreed upon."

   Also, see Iowa Code §562.6:

   "If a written agreement is made fixing the time of the termination of a tenancy, the tenancy shall terminate at the time agreed upon, without notice. Except for a farm tenant who is a mere cropper or a person who holds a farm tenancy with an acreage of less than forty acres where an animal feeding operation is the primary use of the acreage, a farm tenancy shall continue beyond the agreed term for the following crop year and otherwise upon the same terms and conditions as the original lease unless written notice for termination is served upon either party or a successor of the party

in the manner provided in section 562.7, whereupon the farm tenancy shall terminate March 1 following. However, the tenancy shall not continue because of an absence of notice if there is default in the performance of the existing rental agreement."

Note: In the 2016 legislative session, the Iowa legislature enacted, HF 2344, in response to some confusion generated by the Auen v. Auen case (cited and discussed below) requiring that an agreement to terminate a lease for farmland be in writing.

Iowa Code §562.1A defines a farm tenancy as "a leasehold interest in land held by a person who produces crops or provides for the care and feeding of livestock on the land, including by grazing or supplying feed to the livestock." This section also defines an animal feeding operation the same as defined in section 459.102 ("a lot, yard, corral, building, or other area in which animals are confined and fed and maintained for forty-five days or more in any twelve-month period, and all structures used for the storage of manure from animals in the operation. Except as required for a national pollutant discharge elimination system permit required pursuant to the federal Water Pollution Control Act, 33 U.S.C. ch. 26, as amended, an animal feeding operation does not include a livestock market.")

Foster v. Schwickerath, 780 N.W.2d 746 (Iowa Ct. App. 2009). Landlord notified tenant of termination of the tenancy before Sept. 1, but the notice stated the tenancy would terminate at the end of the calendar year. The court noted that the notice of termination of farm tenancy must fix the termination on the first day of March. However, even though the notice improperly set the termination date at the end of the calendar year, the court ruled that a wrong termination date did not nullify the notice and that the notice of termination was valid for a termination date of Mar 1.

2) Crop Residue. In 2010 Chapter 562 was amended to add the following section on legal rights to crop residue:

"562.5A Farm tenancy — right to take part of a harvested crop's aboveground plant. Unless otherwise agreed to in writing by a lessor and farm tenant, a farm tenant may take any part of the aboveground part of a plant associated with a crop, at the time of harvest or after the harvest, until the farm tenancy terminates as provided in this chapter."

3) Termination
   a. When and How

Iowa Code §562.7 provides:

"Written notice shall be served upon either party or a successor of the party by using one of the following methods:

1. By delivery of the notice, on or before September 1, with acceptance of service to be signed by the party to the lease or a successor of the party, receiving the notice.

2. By serving the notice, on or before September 1, personally, or if personal service has been tried and cannot be achieved, by publication, on the same conditions, and in the same manner as is provided for the service of original notices, except that when the notice is served by publication no affidavit is required. Service by publication is completed on the day of the last publication.

3. By mailing the notice before September 1 by certified mail. Notice served by

certified mail is made and completed when the notice is enclosed in a sealed envelope, with the proper postage on the envelope, addressed to the party or a successor of the party at the last known mailing address and deposited in a mail receptacle provided by the United States postal service."

Note: Certified mail is the most often used option for method to give notice of termination. Iowa Code §618.15(1) defines certified mail as mail service provided by the U.S. Post Office where the sender is provided with a receipt to prove mailing. Note that notice of termination is not required by 562.7(3) to be delivered by restricted certified mail (defined in 618.15(2) as certified mail "delivered to addressee only"). Also, acceptance of the notice is not required for completion of service by certified mail. However, the sender must have proof of refusal, e.g., notice marked by postal service as "Returned to Sender", to have completion of service. See Long v. Crum, 267 N.W.2d 407 (Iowa 1978) and Escher v. Morrison, 278 N.W.2d 9 (Iowa 1979) interpreting previous version of current law.

Note: The validity of the certified mail termination procedures for farm tenancies have come into question following the Iowa Supreme Court's decision in War Eagle Village Apartments v. Plummer, 775 N.W.2d 715 (Iowa 2009). In this case the court found that notice of FED hearing by certified mail in a residential lease violated Due Process under the Iowa Constitution. While there may be concerns that the War Eagle analysis could be applied to farm lease terminations, it would appear that the circumstances under farm lease terminations are distinguishable from FED hearings – primarily because of the much shorter time period involved in notice of FED hearings, because there is no hearing for farm lease terminations, and because there are generally no tenant defenses to a farm lease termination notice.

b. Effect of Failure to Terminate

Under 562.6, a farm lease for a term of years continues past the contractual term on a year-to-year basis unless it is terminated prior to September 1 of the final year of the contractual term. While usually it is the landlord who desires to terminate a lease and is therefore required to give notice of termination, 562.6 also applies to tenants who wish to terminate a farm lease. *Pollock v. Pollock, 72 N.W.2d 483, 485 (Iowa 1955).* In *Pollock*, the court rejected the argument that if notice of termination is not given in the final year of a lease, the lease would continue for only one year and then terminate automatically without notice. *Id.* at 485-486. The court ruled that a farm tenancy continues year to year until notice of termination is given. *Id.*

c. Effect of Tenancy on Forfeiture or Foreclosure

In *Ganzer v. Pfab, 360 N.W.2d 754 (Iowa 1985)*, a contract vendee entered into a one-year farm lease with a third-party tenant. The one-year lease was not terminated by the contract vendee prior to September 1 of the year of the lease. The contract vendor served notice of forfeiture on the contract vendee and the tenant in March of the next year. The court ruled that the lease was not properly terminated prior to September 1, stating: "The broad protection the statute provides for farm tenants should not, absent a clear statement of legislative intent, be subjected to a judicial exception in cases where the landlord's rights in the premises are cut off by a forfeiture occurring after the statutory notice date for termination of farm tenancies."

In *Jamison v. Knosby, 423 N.W.2d 2 (Iowa 1988)*, a contract vendee entered into a three-year lease with a third-party tenant just prior to defaulting on the underlying installment real estate contract. The lease was recorded with the county recorder. The contract vendor attempted forfeiture of the real estate contract by serving the contract vendee with notice of forfeiture. However, the tenant

was not served. The tenant considered the forfeiture ineffective because he had not been served with notice of forfeiture of the real estate contract or notice of termination of farm tenancy. *Id.* at 4. The contract vendor considered the tenant's rights extinguished by the forfeiture. *Id.* The court ruled that the tenant was a person in possession of the farm and "[f]ailure to serve notice of forfeiture on a person in possession under Iowa Code section 656.2 renders the forfeiture ineffective. *Fulton v. Chase, 240 Iowa 771, 773-74, 37 N.W.2d 920, 921 (1949).*" *Id.* at 5.

However, a tenant under an oral lease where no factors existed to give the foreclosing creditor notice that the tenant was a party in possession was not entitled to notice of forfeiture. *Dreesen v. Leckband, 479 N.W.2d 620 (Iowa App. 1991).*

In *Kansas City Life Ins. Co. v. Hullinger, 459 N.W.2d 889 (Iowa App. 1990)* a foreclosing creditor failed to terminate a farm tenancy created by the appointed receiver. The creditor contended that the filing of the foreclosure petition and its subsequent indexing in the *lis pendens* index provided the tenant with constructive notice of the foreclosure. *Id.* at 891. However, the court upheld the tenant's rights under the lease.

4) Exceptions to Notice Requirements.

a. Sharecropper

Chapter 562 excludes "mere croppers" from requirements for termination date and notice of termination. While "mere croppers" are not defined in the Code, the Iowa Supreme Court distinguished croppers from tenants on the basis that a tenant has an interest in the land and a property right in the crop while a cropper has no such interest but receives a portion of the crop as pay for labor. *Dopheide v. Schoeppner, 163 N.W.2d 360, 362 (Iowa 1964)*. Custom farming agreements (i.e., contractual arrangements where an operator is hired to perform specific crop raising services) are extensively used today in Iowa and like cropper agreements are not subject to Iowa's farm tenancy law.

b. ~~Failure to Occupy and Cultivate~~ – exception deleted by 2006 legislation.

Before July 1, 2006, ~~Iowa Code §562.6 required that a farm tenant occupy and cultivate farmland for the notice of termination requirements to apply. See *Morling v. Schmidt, 299 N.W.2d 480, 481 (Iowa 1980)* (notice of termination for an oral lease for pastureland was not required because "notice under section 562.5 is required only when the land is both occupied and under cultivation. The land in question was not cultivated. It was used for grazing only."), *Dorsey v. Dorsey, 545 N.W.2d 328, 331 332 (Iowa App. 1996),* (the court ruled that pasture land was not under cultivation.), and *Garnas v. Bone, 637 N.W.2d 114 (Iowa 2001)*(tenant's mowing of land pursuant to a CRP agreement was not cultivation so as to require notice of termination under the statute).~~

As of July 1, 2006, Iowa Code §562.1A defines farm tenancy as a "leasehold interest in land held by a person who produces crops or provides for the care and feeding of livestock on the land, including by grazing or supplying feed to the livestock."

c. ~~Acreage of Less Than 40 Acres~~ – exception deleted by 2013 legislation (except for animal feeding operations)

Senate File 316 effective July 1, 2013 amended Iowa Code §562.6 (Agreement for Termination) which requires written notice of termination of farm leases by Sept. 1 of the final year of the lease. This legislation eliminated the long-standing exemption to the Sept. 1 farm rental termination

notice requirements for farms of less than 40 acres, with one exception. To avoid impacting hog barn, cattle feedlot or other animal feeding operation leases, the amendment does not apply to farms of less than 40 acres where the primary use is an animal feeding operation as defined by Iowa Code §459.102. An animal feeding operation is a lot, yard, corral, building or other area where livestock are confined and fed and maintained for 45 days or more in a 12-month period. An animal feeding operation does not include pasture or any other area where there is vegetation, forage growth or crop residue.

In summary, after July 1, 2013, written notice must be given by Sept. 1 of the final year of a farm lease to terminate the lease for the following crop year for all farm leases, except for farms of less than 40 acres where the primary use is an animal feeding operation. Pastures are not animal feeding operations and therefore pasture leases, as well as crop leases, of less than 40 acres are subject to the Sept. 1 termination deadline. If there is no termination notice by the Sept. 1 deadline, the farm lease automatically continues under the same terms and conditions for the next crop year.

d. Default

Iowa Code §562.6 provides that a farm "tenancy shall not continue because of absence of notice if there is default in the performance of the existing rental agreement." The most obvious default is failure to pay rent. If failure to pay occurs before September 1 of a one-year lease, then the landlord can easily give notice of termination and need not depend on the default exclusion to notice of termination. However, if the failure to pay occurs in other than the last year of a multi-year lease or after the September 1 deadline for notice, the landlord must depend on the exclusion to terminate the lease.

While there can be defaults other than failure to pay rent, termination based on such defaults run the risk of being considered by the courts as attempts to terminate a lease after the September 1 deadline has passed. To avoid this situation, tenants should be given notice of default as soon as the landlord is aware of the default and be allowed a period of time to correct the problem. See *Village Development Co., Ltd. v. Hubbard*, 214 N.W.2d 178 (Iowa 1974) and also *McElwee v. Devault*, 120 N.W.2d 451 (Iowa 1963), a case in which the landlord notified the tenant of several defaults of the lease in the middle of the first year of a three-year lease. The court supported eviction of the tenant and found that the tenant's actions, "while not a flagrant violation of the lease" were nonetheless violations and the landlord was fair in giving timely notice to the tenant. *Id.* at 454. The court seemed to indicate that the decision might have been different if this had been a one-year lease when it noted that the landlord should not have to put up with such a tenant for the remaining two crop years of the lease.

What conduct by the tenant constitutes default? In *Thompson v. Mattox, 2005 Iowa App. LEXIS 125 (Feb. 24, 2005)*, the court discussed the duty of a tenant to farm in a competent manner. Because the parties in *Thompson* did not have a written lease, the court found that the landlord did not have a right to "control and supervise" the tenant Mattox's farming practices. *Id.* The landlord brought suit for breach of contract, alleging numerous deficiencies in the way Mattox conducted his farming activities, that he failed to use nitrogen, use proper equipment, and plant crops on time. Mattox offered evidence to rebut each and every claim of the landlord, arguing that his above average yields, appearance in *Wallaces' Farmer* magazine, and his ability to survive the farm crisis were evidence of his proficiency as a farmer. *Id.* The trial court found in favor of Mattox, agreeing with his quote: "there's a lot of right ways to farm." The Court awarded Mattox damages of $62,054.21 on his counterclaims, which requested damages for lost profits from not farming the farm in 2002, as well as damages for emotional distress as a result of wrongful removal. The Court of Appeals affirmed, taxing the costs of the appeal to the landlord. *Id.*

e. Agreement to Terminate

Prior to July 1, 2016, Iowa Code section 562.6 provided in part: "If an agreement is made fixing the time of the termination of a tenancy, the tenancy shall terminate at the time agreed upon, without notice." As noted previously, in 2016 the Iowa legislature amended Iowa Code §562.6 to require an agreement to terminate a lease for farmland be in writing, in response to *Auen v. Auen*, No. 13-1501, 851 N.W. 2d 547 (Iowa Ct. App. May 14, 2014) (table, unpublished disposition). This amendment went into effect on July 1, 2016.

1. The right of parties to a lease to waive the notice requirements in Iowa's farm tenancy statute was the issue in *Schmitz v. Sondag, 334 N.W.2d 362 (Iowa App. 1983)*. The defendant landlord argued that the notice to terminate requirements of 562.6 did not apply because of the following clause in the lease:

   > The second party [lessee] covenants with the first party [lessor] that at the expiration of the term of this lease he will yield up the possession to the first party, without further demand or notice ... and second party specifically waives any notice of cancellation or termination of said lease and specifically agrees that this lease shall not be extended by virtue of failure to give notice of cancellation or termination thereof. *Id*. at 364. The court ruled that the clauses in the lease could not nullify the tenant protections in section 562.7. *Id.* at 365.

   The court has upheld the right of the parties to agree to terminate without statutory required notice. *Id.* at 365; *Crittenden v. Jensen, 1 N.W.2d 669 (Iowa 1942)*. In that case the parties entered into an agreement to terminate the lease during the crop year after the original written lease was signed. The court ruled:

   > The tenancy was thus ended, and the statute has no application. After the lease had been thus terminated by agreement of the parties, no further notice was required. This statute does not mean that a landlord and tenant cannot agree to cancel or terminate a lease, and that such termination can only be brought about by serving the notice provided for in the section. *Id.* at 670.

   Note: The agreement for termination was executed by the parties before the statutory deadline for notice of termination. However, no subsequent notice of termination was given. The court did not discuss whether the fact that the agreement to terminate was executed before the statutory deadline entered into its decision.

   Note: Rather than relying on the validity of an agreement to terminate the lease after execution of the lease, some landlords simply enter into one-year farm leases and routinely give written notice of termination every year before September 1. This provides the landlord with the flexibility to evaluate the tenant's performance and the terms of the lease after each crop year. If the landlord is satisfied, another lease with the same tenant and with the same terms can be executed. If not, the landlord may negotiate another lease. However, this practice puts tenants in a position of not being able to plan for the next crop year, particularly if the landlord delays making a decision for a substantial period of time.

f. Waiver and Estoppel

The parties to a farm lease may also waive their rights to statutory notice of termination. In *Laughlin v. Hall, 20 N.W.2d 415 (Iowa 1945)*, the court ruled noted that when the landlord told the

tenant she would get another tenant, the tenant did not object and in fact agreed that it was best for the landlord to get another tenant. *Id.* The court ruled that the tenant consented to the lease to the new tenant and waived statutory notice of termination *Id.* at 417.

g. Life estates and farm leases. Iowa Code section 562.8, Termination of life estate — farm tenancy, provides:

"Upon the termination of a life estate, a farm tenancy granted by the life tenant shall continue until the following March 1 except that if the life estate terminates between September 1 and the following March 1 inclusively, then the farm tenancy shall continue for that year as provided by section 562.6 and continue until the holder of the successor interest serves notice of termination of the interest in the manner provided by section 562.7. However, if the lease is binding upon the holder of the successor interest by the provision of a trust or by specific commitment of the holder of the successor interest, the lease shall terminate as provided by that provision or commitment. This section does not abrogate the common law doctrine of emblements."

Iowa Code section 562.10, Rental value, provides:

"The holder of the interest succeeding a life estate who is required by section 562.8 or 562.9 to continue a tenancy shall be entitled to a rental amount equal to the prevailing fair market rental amount in the area. If the parties cannot agree on a rental amount, either party may petition the district court for a declaratory judgment setting the rental amount. The costs of the action shall be divided equally between the parties."

Iowa farm lease appellate court decisions:

(1) *Gansen v. Gansen*, No. 14-2006 (Iowa January 22, 2016). The Iowa Supreme Court ruled that two five year farm leases that renewed for four successive five year terms at the sole option of the tenant violated the Iowa Constitution provision (Article I, section 24) restricting ag land leases to terms of no more than twenty years, to the extent the leases exceeded twenty years. The Court noted: (1) a lease that potentially lasts longer than twenty years is not invalid from its inception, but only becomes invalid after the expiration of a twenty-year period; (2) A critical fact was that the landlord was locked in for 25 years at the discretion of the tenant and that Article I, section 24 does not prohibit a landlord and tenant from mutually agreeing to renew a lease beyond twenty years; and (3) Article I, section 24's prohibition on lease terms of over twenty years protects landlords as well as tenants.

(2) *Wischmeier Farms, Inc. v. Wischmeier,* No. 15-0221 (Iowa Ct. App. April 6, 2016). This case involved a family dispute over a farm lease agreement. The lease was a 10-year crop-share lease executed between the Plaintiff farm corporation and the defendant who was the Plaintiff's son. The principal in the farm corporation was the father who died two years into the lease term. Following his death, the non-farming siblings took control of the corporation and filed suit contesting various provisions in the farm lease. On appeal the Court interpreted alleged ambiguities in an addendum to the standard ISBA form lease regarding the tenant's right to use the landlord's farm equipment on other land the tenant farmed that was not owned by the Landlord corporation and the tenant's obligation for maintenance of that equipment. The Court ruled that the lease did not restrict the use of the farm equipment on other land and that any ambiguity was to be construed against the drafter, the landlord. Further, the Court noted that the tenant had in fact used the equipment on other land prior to his father's death. The Court also ruled the landlord could not sell the equipment that the tenant used in his farm operation. The Court also ruled that maintaining the equipment included making repairs to the equipment. The Court also ruled that as is standard practice in crop share leases, fuel costs were part of machinery and equipment costs to be paid by the tenant and not a crop

input to be shared 50-50. The Court then ruled that although the tenant's father had paid one-half of the grain hauling expense, the lease clearly required the tenant to pay this expense. The Court also interpreted a lease provision allowing the tenant to pasture cattle or till the land under lease as would be consistent with good husbandry and "the best crop production that the soil and crop season permit" and rejected the landlord's claims that it could determine which land could be pasture or tilled. The Court then remanded the case to the trial court for a determination of attorney fees and costs under the lease's terms.

(3) *Porter v. Harden*, 891 N.W.2d 420 (Iowa Mar. 10, 2017). The Iowa Supreme Court vacated the May 11, 2016 Iowa Court of Appeals decision finding that one horse qualified a rural acreage verbal rental agreement a "farm tenancy" subject to farm tenancy termination requirements.

The relevant Iowa Code section 562.6 provides, in relevant part:
"Except for a farm tenant who is a mere cropper or a person who holds a farm tenancy with an acreage of less than forty acres where an animal feeding operation is the primary use of the acreage, a farm tenancy shall continue beyond the agreed term for the following crop year and otherwise upon the same terms and conditions as the original lease unless written notice for termination is served upon either party or a successor of the party in the manner provided in section 562.7." (underline added)

In Iowa Code section 562.1A(1) a "farm tenancy" is defined as:
"a leasehold interest in land held by a person who produces crops or provides for the care and feeding of livestock on the land, including by grazing or supplying feed to the livestock.

The tenants on a rural acreage (of less than 40 acres) objected to eviction arguing a "farm tenancy" that required statutory termination notice before Sept. 1. They argued that because they grazed one horse on the acreage it qualified as a farm tenancy which required statutory notice of termination before Sep. 1 or it continued for another year. The district court ruled that the grazing of the horse did not establish a farm tenancy, but the appeals court disagreed ruling that although the tenants grazed a horse, "an animal feeding operation" was not "the primary use of the acreage" Thus, the appeals court concluded: "We are left with unambiguous statutory language rendering this acreage a 'farm tenancy.' Under the plain terms of sections 562.5 and 562.7, a September 1 notice of termination of the tenancy as of March 1 would appear to be required, even though the farm tenancy is premised on the grazing of a single horse."

Upon application for further review, the Iowa Supreme Court ruled that "reading the statute as a whole," "land which is not devoted primarily to the production of crops or the care and feeding of livestock cannot be the foundation of a chapter 562 farm tenancy." The Court adopted a "primary purpose test" requiring that under the statute 'land be mostly or primarily devoted to crops or livestock." The Court found that this test "avoids two unreasonable endpoints: (1) that a farm tenancy would not exist unless every acre were turned over to agricultural use or, alternatively (2) that devoting a tiny portion of the property to agricultural use would bring about a farm tenancy." The Court then ruled that the "an" in front of "animal" in the statutory list of species falling within the definition of livestock did "not establish a no-exceptions, single animal rule of qualification." The Court recognized that there may be a time when the raising of a single animal could be deemed a farm tenancy because the lease of a tract of land devoted to maintaining a championship stallion could qualify as a farm tenancy if that was the primary purpose that the tenant occupied the land. The Court also ruled that the legislature could not have intended to exempt animal feeding operations from the termination notice requirements but at the same time require termination notice for a tenancy that would be a farm tenancy because of one horse.

Note: Although it would not have changed the outcome under either the Appeals Court's or Supreme Court's analysis, the grazing of a horse is not an animal feeding operation as defined in section 459.102(4), incorporated by reference in section 562.1A(1). An "animal feeding operation" is defined in section 562.1A(1) as " the same as defined in section 459.102" In section 459.102, an "animal feeding operation" is defined as " a lot, yard, corral, building, or other area in which animals are confined and fed and maintained for forty-five days or more in any twelve-month period, and all structures used for the storage of manure from animals in the operation. . . . "In Chapter 459, an animal feeding operation is a confinement feeding operation which is a totally roofed animal feeding operation. Further, under Iowa Code section 459A.102(17) an "open feedlot operation" is " an unroofed or partially roofed animal feeding operation if crop, vegetation, or forage growth or residue cover is not maintained as part of the animal feeding operation during the period that animals are confined in the animal feeding operation." Because the horse was grazed, i.e., vegetation or forage growth, the tenant's activity keeping the horse should not have qualified as an animal feeding operation under 562.1A(1).

(4) *Hettinger v. City of Strawberry Point*, No. 15-0610 (Iowa Ct. App. May 11, 2016). In this case involving a lease for 85 acres of farmland owned by municipality of Strawberry Point, the primary issues were the town's termination of the farm lease. Specifically, the court ruled:

(a) The lease termination sent by the city clerk was valid.

(b) The tenant was not entitled to the corn stover under Iowa Code §562.5A or as part of the crop. Rather, it belonged to the landlord under the terms of the lease.

(c) The tenant was entitled to the pro-rated unused value of the lime which he had applied in a previous crop year. A lease amendment allocated lime and trace materials over seven years and the tenant was to me reimbursed for any unused portion.

(5) *Hope K. Farms, LLC. v. Gumm*, No. 14-1371 (Iowa Ct. App. June 29, 2016). In this case the tenant farmed his mother's land and after she died the land passed to a trust in which he was a co-trustee. The co-trustees could not agree and litigation resulted. In that litigation the tenant's current lease was extended through March of 2015 with a new owner of the farm. There were disagreements under the crop share lease with the new owner. In June of 2013, a court ordered the tenant to allow the landlords to farm the farm for that crop year because he had not planted any crops as of that date. Bench trial was held in 2014 and the court ruled:

". . . Gumm had materially breached the lease by refusing to communicate with the plaintiffs regarding the farm operation; ignoring written and spoken directives regarding preparation of the real estate for planting, type of seed to be planted, and application of anhydrous, liquid nitrogen, and fertilizer; failing to seek authorization from the plaintiffs regarding expenses; failing to prepare the land and plant crops in a timely fashion; and impeding the plaintiffs' right of entry and inspection. The court found that Gumm had no right, interest, or ownership of the crops harvested in the 2013 or 2014 crop year due to his material breach and his failure to cure the breach in spite of multiple opportunities to do so. The court terminated his lease and ordered Gumm to pay court costs and $1000 in attorney fees to both the Schillings and Hope K. Farms."

The appeals court affirmed the district court ruling that there was sufficient evidence that the tenant had breached the lease. The court also rejected the tenant's claims of waiver by the landlords because it was not raised as an affirmative defense, and even if it was not waived, the court stated that there was no evidence of waiver by the landlord or the preceding family trust.

(6) *Iowa Arboretum, Inc. v. Iowa 4H Foundation*, No. 15-0740 (Iowa Sup. Ct. Oct. 28, 2016). The Iowa Supreme Court, reviewing a 99-year lease, ruled that Iowa Const. art. I, § 24 which limits a "lease or grant of agricultural lands" to a term of no more twenty years does not apply to land under lease if the land that could be used for agricultural purposes is in fact leased and used for nonagricultural purposes.

(7) *Gent. v. Gent*, No. 17-1677 (Iowa Ct. App. Oct. 10, 2018). Gent entered into a 20 year lease with his parents. His brother challenged the lease on several grounds, including that Gent was committing waste because he removed terraces, didn't clear downed trees, and removed a building without permission of the landlords, and requested a permanent injunction. The Court overturned the District Court's decision and ruled for Gent finding the brother's testimony not credible and that Gent would have no economic reason to harm the land since he had a 20 year lease. The court also found that if Gent violated the lease, the brother had other adequate legal remedies at law.

Practical Resources and Considerations regarding Farm Tenancies and Leasing:

While there are numerous references on farm leasing and Iowa farm lease law, the Center for Agricultural Law and Taxation at Iowa State University published an article entitled, "Iowa Farm Leases: A Legal Review," available at www.calt.iastate.edu/article/iowa-farm-leases-legal-review. The article provides helpful links to the Iowa State University Extension Service Ag Decision Maker forms database and discusses issues such as the death of a party to a lease, holdover tenants, and issues involving breaches of farm leases, including nonpayment of rent.

X. Fence Law and Trespassing and Stray Livestock.

1) Iowa law requires adjoining landowners to share in the construction and maintenance of partition fences, regardless of whether a party owns or keeps livestock on the property. This duty goes into effect upon the written request of one landowner to the other. See Iowa Code section 359A.1, *Grabert v. Nebergall*, 539 N.W.2d 184 (Iowa 1995), and *Duncan v. Ritscher Farms, Inc.*, 627 N.W.2d 906 (Iowa 2001). The Iowa Supreme Court emphasized in *Grabert* that "chapter 359A applies equally to all adjoining landowners without regard to the use of the land." *Grabert* at 188.

2) The requirements of a "lawful fence" are defined in detail in §359A.18. In addition, if one adjacent landowner builds a "tight fence" (a fence for sheep or swine) the other adjacent landowner must also maintain a "tight fence." See Iowa Code §§359A.20 and 359A.21.

3) Fence viewers (township trustees) are given authority to determine controversies under Chapter 359A. Iowa Code section 359A.3.

4) The Iowa Supreme Court has ruled that a district court deciding an appeal of a decision of the township trustees acting as fence viewers is required to make its own findings and decision and not rely on the fence viewer's "to be the ultimate arbitrators" of fence disputes. On the specific issues in the case, the court ruled that for a fence to be equivalent to a tight fence, it must provide a physical barrier like that of a woven wire fence. The court found that there was not substantial evidence in the record that Sayler's fence of 5 barbed wire strands provided a physical barrier. *Longfellow v. Sayler*, 737 N.W.2d 138 (Iowa 2007).

5) Iowa appellate cases:
   a. *Garret v. Colton*, 2017 Iowa App. LEXIS 78 (Iowa Ct. App. Jan. 25, 2017). Garrett and Colton entered into and recorded a written fence agreement in 2012. When Colton violated the agreement, Garrett filed suit. The District Court and the Appeals Court granted specific

performance ordering Colton, who appeared pro se, to build and maintain a fence per the agreement and awarded attorney fees as provided by the agreement.

b. *Hopkins v. Dickey,* 2017 Iowa App. LEXIS 1087 (Iowa Ct. App. Oct. 25, 2017). This is a somewhat typical fence law case where one adjacent landowner who did not have cattle refused to maintain his portion of the partition fence. The adjacent fence was 600 feet total and Dickey, the cattle producer, had always maintained the 300 feet under the "right-hand rule". When Hopkins refused to maintain his 300 feet portion under the right-hand rule the matter was referred to the fence viewers who ordered to build a fence on his portion that equaled what Dickey had built. Hopkins appealed, pro se, to Johnson County District Court which issued an order consistent with the fence viewers. The appeals court affirmed the District Court and the fence viewers as follows:

Hopkins' argument of an oral agreement that did not require him to maintain any of the fence was rejected because fence agreements must be written and recorded under Iowa Code section 359A.13.

Hopkins argued that he should not have been ordered to build a fence that exceeded the express requirements in the Iowa Code. The court disagreed and ruled "[t]he term 'legal fence' as defined in the statute is not a prescription, however, for how every partition fence must be constructed or what fence viewers must require, but sets forth a minimum standard for a 'legal fence.' . . . In this case, the fence viewers and the court determined Hopkins was responsible for a portion of existing fence that was in such disrepair it did not constitute a 'legal fence.' The district court ordered Hopkins to construct a new fence in keeping with the style and character of the existing fence and in keeping with the fence constructed by Dickey and approved by the fence viewers. Under these circumstances, we find no legal error."

Regarding the "right-hand rule", the Appeals Court did not address that in its analysis and ruling but in its background portion of the decision noted: "In a thorough ruling, the district court concluded Hopkins was legally obligated to maintain a portion of the fence and, based on the evidence presented, the application of the right-hand rule was both 'a customary practice' and 'fair and equitable' in the premises." Thus, although the "right-hand rule" is not in the Iowa Code, courts will respect it and it is the law if the parties have not agreed otherwise in writing and recorded that writing and it is fair and equitable to both parties.

6) Iowa Code Chapter 169C – Stray and Trespassing Livestock
   (a) Iowa Code Chapter 169C requires livestock owners to restrain their livestock as follows:
      1. A person (a landowner or tenant) may take possession of livestock that trespasses on their land or strays onto a public road which adjoins their land. The person may not transfer possession of the livestock to anyone other than the livestock owner or a city or county unless the livestock owner agrees.
      2. A city or county may take possession of the livestock as provided by the city or county. A city or county may not transfer the livestock to anyone other than the livestock owner or a person designated by the city or county to take care of the livestock.
      3. The owner of the stray livestock is liable for property damages and for costs of taking care of the livestock if a city, county, or other person have properly taken possession of the livestock.
      4. A person, county or city taking possession of stray livestock must deliver written notice (in person or by certified mail) to the livestock owner within 48 hours (excluding holidays and Sundays). The notice must: (1) state the name and address of the person, county or

city providing the notice; (2) describe the livestock and where it trespassed or strayed; and (3) estimate the amount of the livestock owner's liability.

5. After receiving the written notice, the livestock owner is required to pay all damages and costs. If the livestock owner does not agree with the amount of damages, a lawsuit may be filed to determine if the livestock owner is liable and, if so, the amount of the damages. This lawsuit must be filed within 30 days after the written notice is delivered.
6. Title to the livestock transfers to the person who took possession of the livestock if a lawsuit is not filed within 30 days and if:
   a. The parties fail to agree on the amount, terms, or conditions of payment; or
   b. The owner of the livestock cannot be identified.

   Any security interests or liens on the livestock remain in effect and the person receiving title to the livestock takes subject to the security interests or liens.

   If title to the livestock is transferred to a city or county, the city or county shall reimburse any person who incurred damages or expenses from the stray livestock. Reimbursement shall be from proceeds remaining from the sale of the livestock after any security interests or liens have been paid.

(b) In 2007, 169C and 359A were amended to add provisions for "habitual trespass". See sections 169C.6. and 359A.22A. Habitual trespass is defined as when livestock strays onto a neighboring landowner's land or a public road 3 or more times within the previous 12 months. Once a habitual trespass occurs, a neighboring landowner may make a written request that the responsible landowner construct a fence. If the fence is not built within 30 days, the requesting party may apply to the fence viewers under procedures in Chapter 359A. If the fence is not built as ordered by the fence viewers, the fence viewers may request that the county supervisors build the fence and assessed to the responsible landowner as unpaid property taxes.

XI. <u>Tiling and Drainage.</u>

1) One of the most common questions from farmers regarding tile drainage: "The landowner whose land drains onto mine is adding more tile and my tile line won't be big enough to handle it. Doesn't he have to help pay for a larger tile line on my land? Can't I refuse to allow him to hook onto my tile line?"

2) Iowa Code section 468.621: "Owners of land may drain the land in the general course of natural drainage by constructing or reconstructing open or covered drains, discharging the drains in any natural watercourse or depression so the water will be carried into some other natural watercourse, and if the drainage is wholly upon the owner's land the owner is not liable in damages for the drainage unless it increases the quantity of water or changes the manner of discharge on the land of another. An owner in constructing a replacement drain, wholly on the owner's land, and in the exercise of due care, is not liable in damages to another if a previously constructed drain on the owner's own land is rendered inoperative or less efficient by the new drain, unless in violation of the terms of a written contract. This section does not affect the rights or liabilities of proprietors in respect to running streams."

3) Iowa Code section 468.2(1): "The drainage of surface waters from agricultural lands and all other lands or the protection of such lands from overflow shall be presumed to be a public benefit and conducive to the public health, convenience, and welfare." See *Wright v. Repp Farms, Inc.,* 5-205/04-0390 (Iowa App. 2005),citing *Hicks v. Franklin County Auditor,* 514 N.W.2d 431, 435 (Iowa 1994).

4) "In Iowa there is also a common law rule which provides: There has been adopted and developed

in this jurisdiction what may best be characterized as a modified civil law rule which recognizes a servitude of natural drainage as between adjoining lands. Under this concept a servient estate must accept surface waters which drain thereon from a dominant estate. On the other hand, no right exists to alter the natural system of drainage from a dominant estate in such manner as to *substantially* increase the servient estate burden. *Braverman v. Eicher,* 238 N.W.2d 331, 334 (Iowa 1976). The holder of a dominant estate has a legal and natural easement in a servient estate for the drainage of surface waters. *Franklin v. Sedore,* 450 N.W.2d 849, 852 (Iowa 1990). In addition, our supreme court has held that the owner of a dominant estate is not required to retain water in ponds or depressions to his detriment. *Moody v. Van Wechel,* 402 N.W.2d 752, 757 (Iowa 1987). The owner may divert water by surface drainage even though additional water enters the servient estate. *Id.* This rule, however, is subject to limitations. A servient owner is entitled to relief if the volume of water is substantially increased, or if the manner or method of drainage is substantially changed, *and* this results in actual damages. *Grace Hodgson Trust v. McClannahan,* 569 N.W.2d 397, 399 (Iowa Ct. App. 1997)." *Wright v. Repp Farms, Inc.*

5) An owner of a dominant estate has the right to drain land onto a servient estate even though this result in an increase in the amount of water being drained. *Dodd v. Blazek,* 66 N.W.2d 104 (Iowa 1954).

6) "The natural flow or passage of the waters cannot be interrupted or prevented by the servient owner to the detriment or injury of the dominant proprietor." *Thome v. Retterath,* 433 N.W.2d 51, 53 (Iowa App. 1988).

7) Analysis:
   i. Is the land in a drainage district or is there a drainage agreement between the landowners? If so, consult the statutory provisions and terms of the drainage district or the terms of the drainage agreement.
   ii. Will there be a *substantial* increase in volume or will there be a *substantial* change in the manner or method of drainage, either of which will result in actual damages?

XII. Agreements for Construction of Livestock Operations, Including Manure Easement/Agreement Terms and Litigation.

As discussed below, crop farmers' interest in manure for fertilizer, but a reluctance to engage in livestock production themselves, has led many crop farmers to seek out manure from livestock producers. Livestock producers without a land base often are interested in purchasing or otherwise securing access to a parcel of land to construct a livestock operation and provide the manure to the crop farmer selling or otherwise providing access to the parcel of land. The legal agreements required in such a transaction may include (of course, depending on the facts of each transaction, not all of these agreements are required in all transactions):

1. Land deed or long-term ground lease/building severance agreement and footprint lease
   a. Both may include rights of first refusal for the seller or grantor of the ground lease
      i. See *West Lakes Properties, L.C. v. Greenspon Property Management, Inc*. 2017 WL 4317297 (Iowa Ct. App. Sep. 27, 2017)(Court ruled that a right-of-first refusal was void and unenforceable because a verified claim under Iowa Code §614.17A was not filed within 10 years of the original filing of the right-of-first refusal notice).

2. Manure easement/agreement (see the detailed discussion in this section of the outline).

3. Non-disturbance agreement with mortgage holders on land where livestock operation is located and land where manure will be applied.

4. Building/feedyard lease or contract feeding agreement if the owner of the building/feedyard will not be feeding their own livestock
   a. Landlord's or contract feeding lien. (see previous section of this outline)

5. Regulatory requirements.
   a. Iowa DNR:
      i. Manure management plan
      ii. Construction design statement or engineering requirements
      iii. Construction permit, including master matrix
      iv. Compliance with separation distances, or waivers of separation distance requirements from residence owners, business owners, and certain public use areas

Manure easements/agreements. Higher crop input prices, including fertilizer, have reemphasized livestock manure's valuable role in crop fertility. The economics of crop production are causing many crop farmers to seek out manure from livestock producers – and they are willing to pay for it. In addition to economics, the agronomic value of manure for crop production has long been known and has not changed. The terms used in manure application agreements in years past may be out of date and lead to problems in this time of demand for manure.

a. Manure application agreements are contractual agreements used when a livestock operation requires land in addition to the land owned or rented by the livestock operation to apply manure. Landowners and tenants benefit from the manure application due to the organic nutrients and organic matter in the manure which enhance crop production. These organic nutrients may take the place of all or a portion of commercial fertilizers.

b. Due to the potential legal and other consequences, all livestock producers who require additional land for manure application and landowners accepting the manure should have a written agreement. Although current DNR rules require manure application agreements to only indicate the number of acres available for manure application and the length of the agreement, the parties should include other terms in the agreement.
   1. A landowner should consider the following factors:
      - Soil nutrient levels and nutrient requirements of crops.
      - Nutrient content of the manure to be applied. Some crop producers are concerned that future technological advances in rations and manure treatment designed to reduce odor may lower the fertilizer value of the manure.
      - Cost of organic nutrients compared with nutrients from commercial fertilizer.
      - Potential soil compaction from application of manure.
      - Potential for increased soil erosion due to possible reduction in crop residue from the manure application.
      - Potential nuisance and other legal liability from application of manure.

   2. A livestock producer should consider the following factors:
      - Removal and application of manure from the facility in compliance with Iowa and federal requirements for manure storage and application.
      - Cost of removal and application of manure.
      - Sale value of manure.
      - Potential nuisance and other legal liability from application of manure.

c. Leased farmland.

i. If the land where the manure will be applied is farmed by a tenant, the tenant's concurrence in the terms of the agreement is essential. In some cases, a tenant may be interested in signing the agreement with the livestock producer (see following discussion on Iowa DNR regulations pertaining to tenants signing manure agreements). Under general real estate law, a tenant has the legal right to possession and use of the leased premises during the term of the lease. However, a tenant's right to possession and use of the leased premises is subject to control by the landowner under the lease. Even if a tenant has the legal right to sign a manure application agreement, a tenant cannot bind a landowner beyond the term of the lease.

ii. If the landowner does not want a tenant to have the authority to sign a manure application agreement, the landowner may prohibit the tenant from doing so in the lease. Furthermore, even if a tenant has the legal right to sign a manure application agreement, a tenant cannot bind a landowner beyond the term of the lease. Thus, an agreement signed by a tenant does not "run with the land" but rather stays – or more appropriately, leaves – with the tenant.

iii. When the farmland is leased, the landlord is committed to the livestock producer for fulfilling terms of the agreement. Some of the terms may actually be fulfilled by the tenant, for example, incorporation of manure. Therefore, a landlord must ensure that the tenant is aware of and agrees to perform certain terms of the agreement. The lease between the landlord and crop tenant should address the terms of the manure application agreement which will be performed by the landlord or tenant.

iv. If the tenant is not a party to the manure agreement, the farm lease should include terms such as the following requiring the tenant to:
1. Take the manure as required by the manure application agreement.
2. Timely pay for the manure directly to the livestock operation.
3. Cooperate with the landlord in complying with the manure application agreement.
4. Otherwise comply with all requirements of the manure application agreement that are applicable to the tenant during the term of the agreement and lease.

v. Under Iowa law, if manure from a confinement feeding operation with a manure management plan will be applied on land not owned or rented by the owner of the operation, the plan must include a copy of each written agreement executed with the owner of the land where the manure will be applied. Iowa Code section 459.312(10)(d) and 567 IAC 65.17(8)(b). If manure from an open feedlot operation with a nutrient management plan will be applied on land not owned or rented by the owner of the operation, the plan must include a copy of each written agreement executed with the owner of the land or the tenant where the manure will be applied. Iowa Code section 459A.208(7)(c) and 567 IAC 65.112(8)(c). Likewise, for manure from a dry bedded confinement operation (cattle and hogs) with a manure management plan, the following Code section applies: "For purposes of a manure management plan for a dry bedded confinement feeding operation, if the application of dry bedded manure is on land other than land owned or rented for crop production by the owner of the dry bedded confinement feeding operation, the plan shall include a copy of each written agreement executed by the owner of the dry bedded confinement feeding operation and the landowner or the person renting the land for crop production where the dry bedded manure may be applied. Iowa Code section 459B.308.

d. Key points in manure agreements are:

- Who is responsible for and pays for manure application must be expressly addressed in the agreement. This often depends on whether the landowner is paying for the nutrient value of the

manure. Landowners most often want the livestock producer to be responsible for manure application since the producer either has the equipment or has more expertise in hiring someone to apply the manure.

- The agreement should expressly state whether either party will receive payment. Depending on market conditions in each locality and the nutrient value of the manure, some agreements provide for no monetary payment by either party, some require the landowner to pay for the manure based on its soil nutrient value or at least for the cost of manure application, while others may require the livestock producer to pay the landowner for the use of the land (these are much less common in recent years).
- A particularly key issue as fertilizers costs increase is whether the livestock producer is required to apply a minimum amount of manure, or any manure, under the agreement. Livestock producers may have more acres than needed to be sure there is enough land for manure under all circumstances. Accordingly, agreements may include a clause stating that there is no guaranty of a minimum amount of manure or that there is no obligation to provide any manure during the term of the agreement. On the other hand, crop producers may want to be assured of a minimum amount of manure each year or may want the agreement to state that they will receive all of the manure from the hog operation for as long as hogs are raised and manure is produced by the operation. This issue needs to be discussed and the parties' agreement expressly written in the contract.
- Because manure is a variable source of crop nutrients, livestock producers may want to include a clause stating that there is no warranty as to the quality of the manure or whether the manure will achieve any particular yield results. Crop producers, on the other hand, may want a specific clause stating that the manure will meet specific standards, particularly if they are paying for and relying on the manure as part of their fertility program.
- As a result of the recent increased threat of foreign animal diseases, e.g., Highly Pathogenic Avian Influenza and African Swine Fever, livestock producers should consider a clause giving them the authority to dispose of mortalities from the livestock operation on the manure agreement land that is adjacent to the livestock operation. It is likely that government authorities will require, or at the least strongly prefer, disposal on adjacent land to avoid potential spreading of the disease if the mortalities are transported on a public road. The clause may limit this right to an animal disease declared to be a state or national emergency by applicable government authorities and in accordance with the requirements of the applicable government authorities declaring the state or national emergency.
- Most livestock producers (and their lenders) want the manure agreement to remain intact if the landowner transfers the farm. Crop producers have also become interested in making sure the agreement remains in effect if the livestock operation is transferred. If so, the agreement should specify that it "runs with the land" and the agreement or a memorandum of the agreement must be recorded with the county recorder.
- The agreement should detail each party's liability under the agreement and whether the parties are indemnifying (hold harmless) each other for liability. Liability for nuisance from application of manure may be a primary concern of parties to a manure application agreement.
- The livestock producer and crop producer may want to take steps to protect against action by any mortgage holder or contract holder on the livestock operation or the crop producer's land. For example, if there is a foreclosure or forfeiture of a landowner's interest in the land, the mortgage holder or contract seller may allege that the manure application agreement is an encumbrance on the land and eliminate the manure agreement in the foreclosure or forfeiture. One way to protect against this is to obtain, before the manure agreement is entered into, a non-disturbance and

attornment agreement from the livestock producer's or landowner's mortgage holder or contract seller.

e. The increase in the value of manure and the increase in pork producer input costs has increased interest in additional terms in manure agreements to reflect the changing economics. Examples include:
   i. Crop producers may want to include a requirement that the livestock producer not implement any management practices or technology that would reduce the fertilizer value of the manure. This type of clause needs to be carefully considered by the livestock producer as it may limit what the producer can do to implement new odor control or other environmentally desired practices.
   ii. A requirement that the crop producer pay for input costs that may rise as the fertilizer value of the manure rises. In addition to feed costs, LP gas for the hog unit, manure sampling, nutrient management plan preparation, and soil testing are example of expenses that the livestock producer may want to require the crop producer to pay all or part of as additional payment for the manure.
   iii. Terms that require the crop producer to guarantee that the livestock producer will have access to corn produced by the crop producer on the land that receives the manure. This clause could set the price for the corn or could simply state that the livestock producer is guaranteed the right to purchase the corn at market price.

f. Manure application agreements are often referred to as leases, easements, or licenses. Manure application agreements differ from farm leases in that the livestock operation contracts to use the land for manure application only and the owner of the land retains the use of the land for all other purposes, including crop production. Manure application agreements should not be drafted as leases in order to avoid confusion with true farm leases which are subject to specific statutory and constitutional requirements. Whether a manure application agreement is an easement or a license may be important in determining whether the agreement "runs with the land" or is personal to the parties. Generally, an easement runs with the land while a license does not. However, a license may, by its express written terms, run with the land. If the parties intend for the agreement to run with the land, such language should be expressly set out in the agreement. Finally, the distinction between an easement and a license may be important if the agreement is breached. If an easement is breached, courts may be more likely to require performance of the agreement rather than limit the judgment to money damages.

g. *Jongma v. Grand Pork, Inc*., 776 N.W.2d 886 (Iowa App. 2009). Court ruled that a reservation to the rights to all manure in the warranty deeds was not effective because the deed was only signed by the Jongmas. The court gave no analysis nor cited any authority for this ruling. Apparently the court found that the reservation to all manure was not an easement, restrictive covenant or any other type of right that can be reserved in a deed. (For a contrary analysis, which was not cited or analyzed by the court, see *Mikesh v. Peters,*282 N.W.2d 215, 217-18). Regarding the manure easements, the court ruled that the easements clearly stated that Major Pork was not obligated to apply any manure to the Jongma's property and had full rights to determine the amount of manure to be applied.

h. *Lubbers v. MDM Pork, Inc*., No. 15-0675, 2016 (Iowa Ct. App. Feb. 24, 2016). Lubbers sold off a parcel of his 80 acres to MDM Pork for MDM to build a hog barn. The parties signed a Real Estate Purchase Agreement that provided Buyer would "provide the necessary manure easement". The Agreement included the standard integration clause. The parties closed the real estate sale but did not sign a written manure agreement. Instead, the Lubbers received the manure from the barn

at no cost by oral agreement. MDM later sold the hog barn and parcel and included in the sale contract a clause: "Buyer understands for the remainder of 2012 Paul Lubbers is entitled to the manure in the hog facility located on the property and buyer agrees to provide Paul Lubbers reasonable access to retrieve the manure." Buyer allowed Lubbers to have the manure in 2012 at no cost, but not in 2013 or after.

Lubbers filed suit alleging breach of the original Real Estate Purchase Agreement with MDM, breach of the oral agreement, and fraudulent misrepresentation. The district court ultimately granted MDM summary judgment on all claims citing the integration clause in the purchase agreement. The Court of Appeals ruled that although the purchase contract contained an integration clause, given the ambiguity in the contract, evidence of the oral agreement should have been allowed. The Court stated:

> "However, the parol-evidence rule "does not come into play until by interpretation the meaning of the writing is ascertained, and, as an aid to interpretation, extrinsic evidence is admissible which sheds light on the situation of the parties, antecedent negotiations, attendant circumstances, and the objects the parties were striving to attain." Hamilton v. Wosepka, 154 N.W.2d 164, 168 (Iowa 1967). The parol evidence rule should not be invoked to prevent a litigant the chance to prove a writing does not, in fact, represent what the parties understood to be their agreement. First Interstate Equip. Leasing of Iowa, Inc. v. Fielder, 449 N.W.2d 100, 103 (Iowa Ct. App. 1989).
>
> Although the Real Estate Purchase Agreement contained an integration clause, given ambiguity in that agreement, the Trust should not be barred from introducing evidence concerning the oral agreement for the purpose of demonstrating the Real Estate Purchase Agreement was representative of the parties' agreement. Based on the parties' past conduct (MDM allowing the manure to be removed for years at no cost), evidence of other agreements not included in the purchase agreement (attorney fees and surveyor fees), MDM's representatives' claimed lack of knowledge on why Paul was allowed to remove manure for years at no cost, and the ambiguous manure easement language in the purchase agreement, we believe material questions of fact exist regarding the oral agreement between the parties. We find MDM's motion for summary judgment on the alleged oral contract was improperly granted."

This case was set for jury trial in Sioux County District Court on Dec. 14, 2016 and was settled and dismissed with prejudice on Dec. 19, 2016.

i. *Thompson v. JTTR Enviro, LLC,* No. 16-1610 (Iowa Ct. App. July 19, 2017). Thompson purchased cropland from Langel, JTTR's predecessor in interest, who constructed a hog operation and Thompson and Langel entered into a manure agreement that ran with the land and gave Thompson the right to manure from the hog operation to cover the cropland he bought from Langel. JTTR bought the hog operation and converted it to a finishing operation. JTTR provided Thompson with enough manure for 73 acres arguing that Thompson was to utilize a corn-soybean rotation that meant he was only entitled to enough manure to cover the one-half of the 146 acres every year that were planted to corn. Thompson sued for the value of all of the manure and the trial court ruled in favor of Thompson. On appeal, the appeals court:
   a. Rejected JTTR's argument that the manure agreement as an easement only imposed a burden on Thompson, but not on JTTR. The court ruled that this agreement was a "written contract that contains the terms agreed to by the parties" and that the "terms of the agreement explicitly impose a burden upon JTTR as the successor of the Langels and reflect the parties' intent to impose such a burden."

b. Rejected JTTR's argument that because finishing manure is "more nutrient rich than manure from a farrowing barn" it was subject to a greater burden to supply manure as required by the original manure agreement. The court ruled that the manure agreement applied to manure and was not specific only to farrowing manure as opposed to finishing manure.
c. Rejected JTTR's argument that under the manure agreement Thompson was only entitled to enough manure for one-half of the 146 acres because he was to utilize a corn-soybean rotation instead of corn-on-corn rotation which required manure on all 146 acres. The court based its ruling in part on the credibility of the witnesses at trial but found more compelling the express language of the manure agreement noting there was "no reference to fertilizing taking place every other year or that fertilizing would occur on only half of the property each year."
d. Reduced Thompson's damages the district court awarded for lost fertilizer value on acres on which planted soybeans because no manure was applied to those acres.
e. Upheld the district court awarding damages for the lost crop nutrient value of the manure based on expert testimony of commercial fertilizer nutrient value.
f. Awarded attorney fees based on a clause in the manure agreement.