AGRICULTURAL LAW UPDATE

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I. Iowa Agricultural Law Update

a. Case Law

i. Business Planning

1. *Hunter Three Farms, LLC v. Hunter*, No. 22-1601, 2024 WL 253402 (Iowa Ct. App. Jan. 24, 2024). The Iowa Court of Appeals held an LLC may bring direct litigation against a member-manager under exceptional circumstances with the consent of all disinterested member-managers. The LLC had authority to bring the suit without the consent of the defendant member.
2. *Walker v. Daniels*, No. 23-0711, 2024 WL 2308699 *(*Iowa Ct. App. May 22, 2024). Plaintiffs originally sued claiming minority shareholder oppression, then amended their petition to add a claim for judicial dissolution. The court held the family farm corporation's shares should be valued on the date of the amended petition, not the original petition, because that is the first and only time they filed a petition for judicial dissolution.

- Kendra Betz, Drake University Law School, L-3, assisted with this outline.
- Portions of this outline were originally prepared for the Iowa Pork Producers Association, the Iowa Cattlemen's Association and the Iowa Corn Growers Association.
- Thank you to Chris Gruenhagen, Iowa Farm Bureau Federation, for her contributions to this outline.
- Thank you to Kristine Tidgren 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/.

ii. Civil Liability
    1. *Vreeman v. Jansma*, 995 N.W.2d 305 (Iowa Ct. App. 2023). The 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*, 2 N.W.3d 422 (Iowa 2024). A semi-truck collided with a standing cow in the interstate. The district court determined the driver failed to prove the livestock owner breached his duty of care. The Court of Appeals and Supreme Court affirmed, holding that an animal on the road is no longer prima facie evidence of an owner's negligence.
    3. *Vagts v. Northern Nat. Gas Co.*, 8 N.W.3d 501 (Iowa 2024). The Iowa Supreme Court upheld a jury's $4.75 million nuisance award to a dairy due to stray electrical voltage from a natural gas pipeline. More details are in Part V Ag Nuisance Update below.

iii. Contract Interpretation
    1. *Midwest Soya Int'l v. Leerar*, No. 22-1158, 2023 WL 4533265 (Iowa Ct. App. July 13, 2023). The Iowa Court of Appeals held that a soybean buyer repudiated the contract when it repeatedly delayed and prevented delivery of soybeans from a farmer. While the contract did not specify a time of delivery, customary practice created an implied term within the contract that prevented the buyer from delaying delivery for more than five months. The farmer was allowed to sell to another buyer without providing any damages to the original buyer.
    2. *In re Estate of Bellus*, No. 23-1147, 2024 WL 3518609 (Iowa Ct. App. July 24, 2024). A long-serving farm worker claimed a farmer who died without a will promised to transfer the farm to him at his death. The court held the farmer failed to prove a promise existed and failed to establish detrimental reliance.

iv. Drainage
    1. *Blue Verbrugge Family Farms, LLC V. Hamilton County Board of Supervisors as Trustees of Drainage Dist. No. 71*, No. 22-1797, 2024 WL 1295075 (Iowa Ct. App. Mar. 27, 2024). The Iowa Court of Appeals vacated a drainage district annexation because the required engineer's annexation study did not show that soil quality in the watershed would be improved, only that the land would benefit from more reliable drainage. This was not sufficient to prove material benefits to the annexed land.
    2. *William and Mary Goche, LLC v. Kossuth Cnty. Bd. of Supervisors*, 5 N.W.3d 650 (Iowa 2024). The Iowa Supreme Court held plaintiffs could not bring a stand along punitive damages claim against the administrators of several drainage districts.

v. Estate Planning
    1. *In re Estate of Todd*, No. 22-1211, 2023 WL 3860112 (Iowa Ct. App. June 7, 2023). The Court of Appeals enforced a will as written even though it resulted in materially unequal distributions among the beneficiaries. The decedent devised land to five children and a set monetary amount to two children. The monetary amount was low compared to the value of the land. There was ample evidence the decedent wanted the children treated equally from a financial perspective, but because the will was unambiguous the stated figures in the will were upheld.
    2. *In re Estate of Johnson*, No. 22-1730, 2023 WL 7015335 (Iowa Ct. App. Oct. 25, 2023). A 96-year-old woman rewrote her will to disown her family and give all her farmland to charity. The Court of Appeals held she had testamentary capacity even though she may have believed she only had a life estate, not the fee simple interest she actually held, because she need not have a perfect understanding of her ownership interest to know the nature and extent of her property.
    3. *Binneboese v. Binneboese*, No. 23-0260, 2024 WL 110136 (Iowa Ct. App. Jan. 10, 2024). The Court of Appeals held the fair market value of a testamentary purchase option should be determined at the time an individual exercises the option to purchase. Rent payments made by the buyer were credited against the purchase price when the parties could not agree on a sales

price for over two years.

4. *In re Estate of Schultz*, 10 N.W.3d 146 (Iowa Ct. App. 2024). The Court of Appeals held beneficiaries may only enter into a family settlement agreement (FSA) after the will is admitted to probate and they take title to any interest they were granted under the will. An FSA must be joined by all heirs but cannot bind hypothetical or contingent beneficiaries who only have an interest if the original beneficiaries disclaim their interest or die.
5. *In re Revocable Living Trust of Jeanne M. Winn*, No. 22-2052, 2024 WL 1291738 (Iowa Ct. App. Mar. 27, 2024). The Court of Appeals held a trust could not be terminated because the material purposes of the trust had not yet been accomplished, even though the tax consequences of continuing the trust may reduce the amount the beneficiaries receive by hundreds of thousands of dollars.
6. *In re Estate of Herthel C. Uhl Revocable Trust*, No. 23-0687, 2024 WL 1757168 (Iowa Ct. App. Apr. 24, 2024). The Court of Appeals held the trustee could not buy farm real estate as part of the winding-up process of the trust. This constituted self-dealing even though the trustee obtained an appraisal and gave the other beneficiaries first chance to purchase the farmland.
7. *In re Estate of Janssen*, 7 N.W.3d 516 (Iowa 2024). The Iowa Supreme Court held that while all interested parties must be joined in a will contest, they do not have to remain involved until the end of the suit when the party consents to dismissal.

vi. Farm Leases

1. *Wallin v. Hurtig*, No. 23-0267, 2023 WL 6620515 (Iowa Ct. App. Oct. 11, 2023). The Iowa Court of Appeals held that one tenant in a tenancy-in-common could not terminate a farm lease entered into by a life estate holder without the permission of the other co-owners. The court also held that a co-executor could not terminate a farm lease during probate administration without the unanimous consent of the other co-executors.

vii. Real Property

1. *Guiter v. Meinecke*, No. 23-0773, 2023 WL 8071071 (Iowa Ct. App. Nov. 21, 2023). A life estate holder was granted a power of sale for the purpose of funding her "health, support, and maintenance." The Iowa Court of Appeals held the remainderman, not the life tenant, had the burden to prove why the sale was done. The sale was upheld.
2. *In re Trust Under the Will of Youngerman*, No. 22-1761, 2023 WL 8069976 (Iowa Ct. App. Nov. 21, 2023). The Court of Appeals held Iowa's partition law did not apply to farmland owned by a trust. Iowa Code chapter 651 contains provisions for the partition of "heirs property." Heirs property means land held in tenancy in common. Because the trust owned the property in full, there was no tenancy in common.
3. *Vaudt v. Wells Fargo Bank*, 4 N.W.3d 45 (Iowa 2024). The Iowa Supreme Court overruled *Heer v. Thola*, 613 N.W.2d 658 (Iowa 2000) to find that boundary by acquiescence claims are not cut off by the one year limitations period for bringing claims arising from the transfer of property by a trustee.
4. *Sundance Land Co, LLC v. Remmark*, 8 N.W.3d 145 (Iowa 2024). The Iowa Supreme Court ruled that common ownership of adjacent parcels eradicates otherwise existing claims of boundary by acquiescence by subsequent purchasers. The court held the 10-year time period implies a "continuous time leading up to the present or near-present—typically up until the current controversy arose."
5. *Robinson v. Linn Cnty. Bd. of Supervisors*, No. 23-0705, 2024 WL 2842296 (Iowa Ct. App. June 5, 2024). The Court of Appeals upheld the Linn County Board of Supervisor's decision to rezone agricultural land as an agricultural district with a renewable energy overlay district. The court found the rezoning complied with the comprehensive plan. It also found the primary purpose of the land was for the generation of solar power, not agriculture, even though tile line ran through the property. Finally, the rezoning was not a taking because the plaintiffs failed to show their natural drainage easement would be violated by the construction

of the solar farm.

b. Legislation

i. Trespass by Remotely Piloted Aircraft. House File (HF) 572. Prohibits the use of drones over a homestead or over the part of a farmstead where agricultural animals are kept.

ii. Increased Poultry Processing Opportunities. House File (HF) 2257. Allows state poultry processing facilities to perform both official inspected and custom-exempted processing at the same facility. Previously poultry processors had to choose between the two.

iii. Restoring the Capital Gain Exclusion for the Sale of Breeding and Dairy Livestock. House File (HF) 2649. Allows those who cull dairy and breeding livestock that have been held for the required period to exclude capital gain from the sale of that livestock from Iowa income.

iv. Enhanced Reporting and Penalties for Foreign Ownership of Agricultural Land. Senate File (SF) 2204. Requires foreign purchasers of agricultural land to register with the Secretary of State's office, in addition to continuing to file the already required biennial reports. The Secretary must create an annual summary of the registrations and reports.

v. Misbranding of Imitation Meat and Egg Products. Senate File (SF) 2391. Provides that a lab grown or plant-based food product is misbranded if it includes a meat term without a qualifying term, such as "cell-cultivated" or "veggie." Forbids the sale of such misbranded food products. Similarly, it prevents fabricated eggs from being labeled with egg terms without qualifying terms. Finally, it requires Iowa to seek a waiver from USDA to prevent fabricated eggs from being eligible for SNAP and WIC.

vi. Individual Income Tax Rate Cuts. Senate File (SF) 2442. Accelerates the scheduled rate cuts by changing the tax rate for all income in tax years 2025 and beyond to 3.8%. Also lowers the alternative income tax rate from 4.4% to 4.3% beginning in tax year 2025.

vii. Resolution Proposing Constitutional Amendment to Require a Single Individual Income Tax Rate. Senate Joint Resolution (SJR) 2004. Proposes a constitutional amendment that would prevent a future legislature from imposing a graduated tax rate. To become effective, it must be ratified by the next General Assembly and then by a majority of the voters at a future election.

c. Regulations

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
- 2025 Schedule:
  - Utilities Commission
  - Inspections and Appeals Department
  - Environmental Protection Commission: general; solid waste management and disposal; spills and hazardous conditions; hazardous waste
  - Natural Resource Commission: general; seasons, limits, methods of take
- 2026 Schedule:
  - Agriculture and Land Stewardship Department
  - Soil Conservation and Water Quality Division
  - Fair Board
  - Petroleum Underground Storage Tank Fund Board

ii. Iowa Department of Natural Resources

1. Animal Feeding Operation Rule. The Iowa Environmental Council adopted a comprehensive rule on animal feeding operations, 567-Ch. 65, on April 16, 2024, which went into effect on June 19, 2024. The rule is primarily non-substantive restructuring and rewording to comply with the Governor's Executive Order 10, but also includes substantive changes. The major changes are:
   - Added a general division which applies to all operations
   - Some references to Iowa Code taken out
   - Remove appendices from the rule; available on DNR website only as rule reference documents
   - The so-called "Director Discretion Rule" was deleted. This rule was adopted in 2006 and gave the DNR Director authority to amend requirements to construct or operate a confinement feeding operation or deny construction, a permit, or MMP. Shortly after the rule was adopted in 2006, the Attorney General's Office advised that the rule exceeded DNR's statutory authority and the legislative Administrative Rules Review Committee objected to the rule for that reason. The rule was never used as adopted prompting removal in this rulemaking.
   - 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
     - Karst terrain rules were not changed except to add a requirement that all soil corings required to establish the depth of bedrock, and therefore determine if the proposed located in in Karst terrain, must be taken to a depth of 7 feet below the bottom of the proposed formed manure storage structure or into bedrock, whichever is shallower.
   - County Right to Appeal Construction Permit – Waiver. A county board of supervisors that has approved an applicant's master matrix and submitted an evaluation to DNR may waive the county's 14-day right to appeal DNR's preliminary decision to approve the construction permit application to the EPC by filing a written notice of waiver after receiving DNR's preliminary decision. This waiver then allows DNR to immediately issue the final permit allowing the producer to proceed with construction without waiting for the 14-day appeal period to expire.
   - Phosphorus Index, Sheet & Rill Erosion and Ephemeral Gullies. In 2023 an Iowa District Court judge in the case of *Sierra Club, et. al. v. Iowa DNR and Supreme Beef*

ruled that DNR's rules did not allow for determining the rate of ephemeral gully erosion from photos instead of following the technical guide of USDA NRCS, and did not allow for not calculating ephemeral gully erosion because it was not visible at the time of the permit application. To comply with that ruling DNR recommended and EPC adopted 65.111(12)(a) and (b).

2. Other DNR AFO Rule Issues
   - 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 include immunity from penalties if a violation discovered during audit and promptly reported to DNR, before DNR investigates and confidentiality of audit report
       - No immunity from penalties if DNR is not properly notified, if violations are intentional or result in injury to persons, property or environment or if there is substantial economic benefit giving violator a clear economic advantage over competitors
   - Food & Water Watch Research Memo. On Dec. 9, 2024 FWW released a research memo, "In Hot Water: Iowa's Animal Agriculture Has a Spill Problem", alleging that DNR penalties levied against livestock operations for discharging manure to waters of the state have not been sufficient.

II. Federal Agricultural Law Update

a. Case Law

i. Administrative Law

1. *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024). The Supreme Court overruled the Chevron doctrine requiring reviewing courts to defer to agency interpretations of statutes. The Court held that courts may look to agencies for guidance and must give due respect to their regulations. However, courts, not agencies, must resolve statutory ambiguities.
2. *Corner Post, Inc. v. Board of Governors of the Fed. Reserve Sys.*, 144 S. Ct. 2440 (2024). The Supreme Court ruled that an Administrative Procedure Act claim does not accrue for purposes of the six-year statute of limitations until the plaintiff is injured by final agency action.

ii. Ag Fraud

1. *Animal Legal Defense Fund v. Reynolds*, 89 F.4th 1065 (8th Cir 2024); *Animal Legal Defense Fund v. Reynolds*, 89 F.4th 1071 (8th Cir 2024). In two separate opinions the Eighth Circuit upheld Iowa's Farm Trespass law and Trespass Surveillance statute, finding they did not violate the First Amendment. More details can be found below in Part IV Ag Fraud & Trespass Update.

iii. Antitrust

1. *In re Cattle and Beef Antitrust Litig.*, No. 22-md-03031, 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. The Court granted leave to amend the complaint. Various amended complaints and answers have been filed. Motion pleading is ongoing.

iv. Entities

1. The Corporate Transparency Act requires most small entities to file online reports with the

federal government disclosing information about beneficial owners by 2025. Two federal district courts have concluded that the Act exceeds congressional authority. *National Small Business United v. Yellen*, 721 F.Supp.3d 1260 (N.D. Ala 2024), enjoined the Department of the Treasury from enforcing the Act against those specific plaintiffs.
Texas Top Cop Shop, Inc. v. Garland, No. 4:24-CV-478, 2024 WL 4953814 (E.D. Tex. Dec. 3, 2024), granted a preliminary injunction enjoining the government from enforcing the Corporate Transparency Act and its Implementing Regulations.

v. Estate Planning
   1. *Connelly v. Unites States*, 144 S. Ct. 1406 (2024). The Supreme Court held that a corporation's contractual obligation to use life-insurance proceeds to redeem decedent's shares did not offset the value of the life insurance when valuing the shares for estate tax purposes.

vi. Real Property
   1. *Ideker Farms, Inc. v. United States*, 71 F.4th 964 (Fed. Cir. 2023). The Court of Appeals for the Federal Circuit held the Army Corps of Engineers' work to restore the Missouri River to its natural condition caused intermittent flooding and constituted a per se taking of farmland. Because the flooding would continue into the future it was a permanent flowage easement. It further held lost crops were not a consequential damage of the taking, but a separate compensable property interest.

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 were 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."
        - The Ninth Circuit stated support for the Committee when it rejected Food and Water Watch's petition for rulemaking to revise the CAFO rules in *Food and Water Watch v. EPA*, No. 23-2146, 2024 WL 4371122 (9th Cir. Oct. 2, 2024)
    - 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. EPA Livestock Farm Air Emissions
   1. EPCRA Reporting
      - Public comments on EPA's proposal to consider a rule to reinstate the reporting requirement for livestock farms were due Feb. 15, 2024. On Sep. 3, EPA updated its webpage noting that the comment period closed and that EPA is still reviewing those comments. As EPA stated in the Nov. 17, 2023 notice, "Once that review is completed,

EPA will determine whether to pursue a proposed rule to reinstate air emission reporting from animal waste at farms under EPCRA."

2. CAFO Air Consent Decree from 2005
   - Air emissions estimating methodologies
     - Swine barns & lagoons, broilers, egg-layers, dairy barns & lagoons, and VOCs
     - On Nov. 14, 2024 EPA released draft AP-42, Chapter 9, Section 4 and Air Emissions Estimating Methodologies for Animal Feed Operations https://epa.gov/afos-air/draft -ap-42-chapter-9-section-4-livestock-and-poultry-feed-operations-andair-emissions
     - Timetable
       - Formal public comment period, November 14,2024 to February 10, 2025
       - Finalization of all AFO emission models, Spring 2025
3. Iowa Environmental Council Safe Drinking Water Act Petition. This petition was filed with EPA on April 16, 2024 following the Iowa EPC's adoption of the Ch. 65 rule alleges a threat to drinking water in Iowa's Karst region in northeast Iowa from nitrates from ag activities and asks EPA to take emergency action under the Safe Drinking Water Act to require Iowa to address the allegations, including prohibiting CAFO's from opening, expanding, or modifying operations until wells with high nitrates are reduced, require DNR to impose monitoring and discharge requirements related to subsurface discharges from manure as well as discharges from land application of manure, and initiate lawsuits against entities causing threats to public health by contaminating drinking water supplies. EPA has not taken action on this petition.
4. Sierra Club Petition. On July 24, 2024, Sierra Club filed a Petition for Withdrawal of Iowa's Delegated Authority Under the Clean Water Act alleging that EPA should withdraw Iowa DNR's authority under the NPDES permit program because it does not require NPDES permits for confinement feeding operations and because 467 Iowa facilities (municipal and industrial, as well as animal feeding) are operating on expired permits. A similar petition regarding animal feeding operations was filed in 2007 and ultimately rejected by EPA in 2018. EPA has not taken action on this petition.

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. 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 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.

On June 25, 2024, the 9th Circuit affirmed dismissal of the complaint. Two judges found the Supreme Court's reasoning in *NPPC v. Ross* was not binding because the Court did not agree on a single rationale and no opinion was a logical subset of another. Thus, the Court was bound by its previous decision in *NPPC v. Ross*, 6 F.4th 1021 as to the Dormant Commerce Clause claim.

Judge Callahan wrote a concurrence arguing the Supreme Court may have produced a single rationale in *NPPC v. Ross* that would have saved IPPA's Pike claim. The Judge noted a majority of the justices would find Prop 12 is compatible with Pike balancing and that IPPA had plausible alleged a substantial burden to interstate commerce. However, because those conclusions were not drawn from opinion that were a "logical subset of the other," and because the 9th Circuit is bound by *NPPC v. Ross*, 6 F.4th 1021, Judge Callahan concurred in the dismissal. Thus, overall, the Court found IPPA had failed to state a claim under any of the asserted theories.

b. Massachusetts Question 3.

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.

   The stay was subsequently extended until August 8, 2024. On August 2, 2024, the parties filed a motion to extend the stay for an additional six months, or until 60 days after promulgation of final regulations, whichever is earlier.

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. Iowa and 12 other states filed an amicus brief in support of Triumph Foods.

   On September 28, 2023, Massachusetts filed a motion to dismiss for failure to state a claim. The Court granted the motion for the majority of the claims, but denied the motion with respect to Count 1, a violation of the Dormant Commerce Clause. Both parties then filed a motion for summary judgment on the Dormant Commerce Clause claim. The Court granted the motion in most respects and the parties agreed to proceed on a case stated basis with respect to the

slaughterhouse exception.

On February 5, 2024, the Court concluded the "slaughterhouse exception" violated the dormant Commerce Clause and severed it from the rest of the Act. The "slaughterhouse exception" provides that sales of pork (defined as where the buyer takes physical possession of the pork) on the premises of a facility inspected under the Federal Meat Inspection Act (FMIA) are exempt from Q3. Because Triumph Foods is an out-of-state pork processor, it cannot take advantage of this exception because buyers cannot "take physical possession" at an in-state FMIA plant. The Court ruled this exception imposed disproportionate burdens on out-of-state interests while conferring advantages upon in-state interests and is therefore discriminatory under the dormant Commerce Clause.

On March 6, 2024, Triumph Foods filed a Motion for Summary Judgment arguing that because the "slaughterhouse exception" is severed, Q3 is preempted by the FMIA. Triumph Foods argues that the Act imposes additional requirements, within the scope of the FMIA, onto FMIA regulated facilities. Triumph Foods further asserts that the "sales ban" (provision providing a prohibition on the sale of whole pork meat not compliant with Q3) conflicts with and obstructs the objectives of the FMIA. Therefore, Triumph Foods asks the Court to sever the "sales ban" from the Act. Massachusetts then filed a cross motion for summary judgment.

On July 22, 2024, the Court granted Massachusetts's motion for summary judgment against Triumph. The Court held Q3 is not preempted by the FMIA.

- Q3 is not expressly preempted because the Act "only bans the sale of noncompliant meat, it does not regulate how a slaughterhouse operates." Additionally, the Court noted that the burden of segregating noncompliant pork is not new as Triumph already does so for organic, grass-fed, and other specialty pork. Triumph further argued that because a stated purpose of the act is health and safety, it creates additional requirements for the same purpose as the FMIA. The Court disagreed and found the Act had no effect on health and safety, it was purely an animal welfare act.
- Q3 also does not violate principles of conflict preemption because it creates no obstacles to ensuring safe and healthy pork enters Massachusetts and because slaughterhouses can easily comply with both federal and state requirements. Triumph argued that the Act results in pork that had passed USDA inspection being withdrawn from the market, but the Court found this was no different than any other mislabeled pork being withdrawn from the market.

Triumph appealed this decision to the First Circuit on August 14, 2024. Iowa led the efforts of drafting an amicus brief with 21 other states in support of the appeal. Oral Argument was held December 2, 2024.

c. Federal legislation.

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

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

There are many details producers must consider in 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://fixprop12.com/facts/.

IV. Ag Fraud & Trespass Update

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 exclusively prohibits 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 false statements with an employment application were not required by the law to be material to the employment decision. *ALDF v. Reynolds*, 8 F.4th 781 (8th Cir. 2021).

- 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. *ALDF v. Kelly*, 9 F.4th 1219 (10th 2021).

- 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 was appealed to the Eighth Circuit (see discussion below).
  - 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 but 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 was appealed to the Eighth Circuit (see discussion below).
- 2024:
  - 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). It ultimately upheld both laws as constitutional.
  - The § 717 challenges were heard in *Animal Legal Defense Fund v. Reynolds*, 89 F.4th 1065 (8th Cir 2024). The Court reversed the decision of the district court and upheld the law. The Court found the "new law solves the materiality problem in the employment provision by forbidding the use of deception 'on a matter that would reasonably result in a denial of an opportunity to be employed.'" The new law also added an intent element, forbidding deceptive speech only when the individual gains access or employment with the intent to cause harm. This was not deemed to be viewpoint-based discrimination because it only forbids false statements resulting in legally cognizable harm.
  - The § 727 challenges were heard in *Animal Legal Defense Fund v. Reynolds*, 89 F.4th 1071 (8th Cir 2024). The Court reversed the decision of the district court and upheld the law. First, the State clearly has a legitimate interest in protecting private property. Second, the Court found the law was narrowly tailored because the ban on cameras only applies when there has first been an unlawful trespass. Ultimately, trespassing harms

privacy and property interests and "trespassers exacerbate that harm when they use a camera while committing their crime. The Act is tailored to target that harm and redress that evil."

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* ultimately upheld Iowa's access provision and employment provision after a materiality requirement was added. And the Tenth Circuit in *Kelly* in essence, and contrary to *Reynolds*, gave more weight to Free Speech rights 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. Drones.

i. *Nat'l Press Photographers Ass'n v. McCraw*, No. 22-50337, 90 F.4th 770 (5th Cir. 2024). 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.
The Supreme Court denied the petition for writ of certiorari filed by the National Press Photographers Association on October 7th, 2024.

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 was 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 was 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. This electric current is 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 Vagts ultimately dismissed their negligence claim and proceeded to trial on nuisance. 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.

On June 21, 2024, the Iowa Supreme Court upheld the jury's damages award in *Vagts v. Northern Nat. Gas Co.*, 8 N.W.3d 501 (Iowa 2024). At the Supreme Court Northern Natural Gas argued the district court erred by failing to instruct the jury that negligence is required in a nuisance cause of action. Writing for the Court Justice McDonald rejected that argument and held "negligence is not an element in a nuisance claim." If a nuisance condition exists, the person responsible is liable for the resulting damages, even if they acted reasonably. Three justices wrote a special concurrence disagreeing with the majority's analysis of nuisance law. The concurrence argued, "strict-liability nuisance has to involve activity that is unacceptable to the ordinary person." When a party is engaged in a specialized or unusually vulnerable use, negligence should be required. Stray voltage is not a problem for people but can be for cows, especially dairy cows. Thus, dairy farming is a specialized, not ordinary use.

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.

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.

[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.

- 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 § 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 § 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, .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) <u>For livestock feed</u>, 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) <u>For all other ag supplies</u>, the lien has the following priority:
"<u>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</u>. 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,* 2013 WL 6223416, *8-10 (Minn. Ct. App. Dec. 2, 2013).

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, 2013 WL 6223416, *11-13 (Minn. Ct. App. Dec. 2, 2013). 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 was 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 §§ 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 § 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 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 §§ 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. Negotiate 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 non-disturbance 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 regulations 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?

Moratoriums on Wind or Solar Energy Projects Throughout Iowa

a. Adams County – Moratorium on commercial solar project, but not new wind projects. Effective until May 1, 2025.

b. Taylor County – In the spring of 2023 the Board of Supervisors passed a resolution establishing a moratorium on new wind and solar energy projects in unincorporated areas effective until an amendment to existing ordinances can be considered.

c. Clarke County – temporary moratorium on wind energy projects in unincorporated areas of Clarke County. No end date to moratorium, in effect until county adopts a permanent moratorium or rescinds the temporary moratorium.

d. Mitchell County – moratorium on wind energy projects starting June 2023 that lasts 18 months while they work on an ordinance. As of October 2024, there is no new ordinance.

e. Linn County – Solar moratorium extended through September 30, 2023. New ordinance was adopted on July 31, 2024. Moratorium is no longer in effect.

f. Cerro Gordo County – Moratorium on wind, solar and battery storage projects until December 31, 2024.

g. Emmet County – Moratorium on wind energy projects until January 31, 2025.

h. Muscatine County – Moratorium on commercial wind energy systems until March 16, 2025.

i. Clinton County – Moratorium on utility scale wind installations under December 31, 2024.

j. Montgomery County – Moratorium on wind energy projects until December 31, 2024.

k. Floyd County – Moratorium on wind energy projects until December 23, 2024.

l. Hardin County – Indefinite moratorium on wind energy projects passed in 2019.

m. Henry County – Moratorium on the rezoning of any land to the Alternative Energy Overlay District which would allow for commercial wind energy systems until March 2, 2025.

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

Summit Carbon Solutions:
The Iowa Utilities Commission (formerly the Iowa Utilities Board) granted Summit Carbon Solutions petition for a hazardous liquid pipeline permit and vested the company with the right to eminent domain. Summit intends to capture carbon dioxide from several Midwest ethanol plants and transport it via an underground pipeline to North Dakota for permanent sequestration. The permit was granted on August 28, 2024, but construction cannot begin until Summit receives approval in North Dakota and South Dakota.

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 County Board 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.

c. *William Couser v. Story Co.,* 704 F. Supp. 3d 917 (S.D. Iowa 2023) (Appeal: 23-3760) and *William Couser v. Shelby Co.,* 704 F.Supp.3d 941(S.D. Iowa 2023) (Appeal: 23-3758).
    i. Summit Carbon Solutions and Story Co farmer William Couser filed suit against Story Co and Shelby Co alleging that county ordinances regulating hazardous liquid pipelines were preempted by the federal Pipeline Safety Act. The Southern District of Iowa granted Summit's motion for summary judgment. The counties appealed to the Eight Circuit. Oral argument took place on November 20, 2024.

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, LLCs, LPs, 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 LLCs, 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 LLCs. 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, LLCs, 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. *LPs and LLLPs*. 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. *GPs and LLPs*. 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), LPs and LLLPs (those that meet the requirements in ¶f), nonprofit corporations, or other GPs or LLPs (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. *IRAs*. 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 401Ks and SEPs, 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 ¶¶ 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, IRAs that are authorized trusts cannot own or lease ag land in Iowa. However, IRAs 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, LLPs 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.
- LLCs are often used instead of corporations due to income tax advantages. As set out in ¶¶ c and e, LLCs 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 LLPs 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 LPs that are not family farm LPs.
- Individuals are not regulated 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 § 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 § 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 § 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 § 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 §§ 9I.1(1) and (2).

f) Exceptions:
   1) Ag land acquired by devise or descent. Iowa Code § 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 § 9I.5.
   2) A bona fide encumbrance on ag land taken for purposes of security. Iowa Code § 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 § 9I.3(3)(c).
   4) Ag land acquired for research or experimental purposes. Iowa Code § 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 § 9I.3(3)(e). A report must be filed with the Secretary of State before March 31 of each year. Iowa Code § 9I.8. The land must be converted to a purpose other than farming within 5 years after acquisition. Iowa Code § 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 § 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 § 9I.7.

h) The Iowa Attorney General has enforcement authority after receiving a report of a violation from the Secretary of State. Iowa Code § 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 § 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 § 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 March 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 485-86. 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,* 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 § 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.

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 § 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 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 § 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.

<u>Iowa farm lease appellate court decisions</u>:

(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.

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 September 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 § 459.102(4), incorporated by reference in section 562.1A(1). An "animal feeding operation" is defined in § 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 § 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, Trespassing & 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 § 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 § 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 § 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 §§ 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 assess the cost to the responsible landowner as unpaid property taxes.

XI. Tiling & Drainage.

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.,* 5-205/04-0390 (Iowa App. 2005).

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 § 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 § 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 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). The 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.

j. *RCB Porkers 4, LLC v. Jerry Seuntjens*, No. 23-0677, 4 N.W.3d 723 (table decision) (Iowa Ct. App. Feb. 7, 2024) involved a manure application agreement that permitted RCB Porkers 4, LLC to enter onto Seuntjens' land to dispose of manure produced by the RCB's swine facility. The contract stated that the manure should be "…applied in an amount equal to 65% of the commercial fertilizer rate at First Cooperative Association of Kingsley, Iowa, said rate to be determined as of the date the first manure is applied during that time period." The dispute arose because Seuntjens asserted that the price is 65% of the price FCA provides him personally, not the commercial rate published.

The Iowa District Court found no ambiguity in the agreement. Courts give effect to language of the whole contract to not render any parts of the contract superfluous. The term "commercial fertilizer rate" clearly refers to the published price of commercial fertilizer at FCA.

The Appeals Court affirmed, first by rejecting extrinsic evidence of a course of dealing that in two separate years RCB had accepted payment by Seuntjens based on the price FCA provided him personally. The Court noted:

> The difference in both the rate and final price calculation in 2020 was minimal—not much more than a rounding error in a substantial, multi-year contract. There is no evidence that the parties discussed the discrepancy or that RCB Porkers would have had any other reason to know that Seuntjens was using his own "price I can get" rather than simply making an error, using a different day's rates, or trying to shave off a few dollars. And so this course of dealing more likely shows that RCB Porkers was making a rational business decision that it was not worth its time to investigate further rather than manifesting any agreement with Seuntjens's interpretation of the term.

The Court then found no ambiguity nor any basis for Seuntjens's proposed interpretation. The Court ruled that the contract term "an amount equal to 65% of the commercial fertilizer rate at First Cooperative Association (FCA) of Kingsley, Iowa, said rate to be determined as of the date the first manure is applied during that time period" plainly meant "that the manure price must be calculated from the rate at which the cooperative is selling the commercial fertilizer on the relevant day." The Court also noted the term "the" was further evidence that the commercial rate being referred to was a single, particular rate.