



Farmers' Guide to Minnesota Lending Law

**Second Edition
June 2003**

Farmers' Legal Action Group, Inc.

This book incorporates all changes
made by the Minnesota Legislature
through the 2003 Special Session.

Farmers' Guide to Minnesota Lending Law

Second Edition, June 2003

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Stephen Carpenter

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Randi Ilyse Roth
Executive Director
Farmers' Legal Action Group
May 2003

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Dedicated to the memory of Paul Wellstone.

May we all continue to remember
the passion and drive in
Senator Wellstone's work on behalf of
Minnesota family farmers.

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Chapter One

Introduction

I. Credit and farming

Credit is the lifeblood of farming. Serious price, production, and weather difficulties almost always become credit problems. The stark and ongoing reality is that mortgaged farms are lost or nearly lost to foreclosure, property pledged as collateral is repossessed, judgment liens are entered—and the livelihood of family farmers is threatened.

Credit problems are almost always legal problems. In an ideal world, the law would be clear enough and the legal system fair enough that everyone would be on a more or less even footing in legal matters. Unfortunately, the law can be complicated, and even where the law is simple at its core, legal language is confusing and difficult.

Farming without a working knowledge of lending law—or the resources to buy legal assistance—can have devastating results. The aim of this book is to give farmers a basic outline of lending law. Because so few legal situations are exactly the same, this book can only offer a general outline of the law.

II. Keeping a written record of credit arrangements

The strictly business nature of agricultural credit has long been softened by informality. Informal and unwritten agreements may well still work for some people in some cases, but in general it is important to keep thorough written records of dealings with creditors. As a matter of law, many agreements must be in writing to be legally enforceable. These are discussed briefly in Chapter Two.

Even when it is not required by law, it is a good idea to keep a written record of dealings with creditors. The main problem is not unfair or sharp business practices—although that is common enough—but, instead, simple confusion and misunderstandings. Most disputes about leases, contracts, and other legal agreements are the result of the two basically honest parties having different interests and different ideas about the meaning of the agreement itself. This type of problem is much more common in an age of conservation compliance, government crop programs, and complex security agreements.

Even the most honest and trusting relationships can change through no fault of farmers or their creditors. Banks change hands or are sold out; landlords can pass away or sell the land. The list of possible problems is very long. Keeping good records of dealings with a creditor is a little like buying insurance. It is done not because farmers expect to have problems, or because they want to go to court at the drop of a hat, but because in that rare case that farmers do have

serious problems with creditors, it will be extremely important to be able to prove exactly what happened and when. One way to think about keeping good records is to imagine that they may be needed to prove to a stranger exactly what happened between the farmer and the creditor. No one's memory is good enough to recall all of the important details.

Some suggestions follow.

A. Keep copies of documents

Keep copies of all loan agreements, promissory notes, security agreements, mortgages, contracts for deed, leases, and the like, and note on them the date they were signed, sent, or received.

B. Put important contacts with creditors in writing

Farmers should document every important contact with their creditors. Letters should be written and copies kept.

C. Verify what is sent and received

In many cases, it will be important to show that documents sent were received. There are two simple ways to create proof that someone received a letter or form. First, farmers can mail letters and documents by certified mail, return receipt requested, and keep the evidence of receipt.

A second way to prove that someone received a letter is to bring two copies of the letter or form into the office in person. The person accepting the letter should be asked to write on each copy: (1) "received," (2) the date, and (3) his or her signature. Farmers should keep a signed copy for themselves.

D. Document telephone calls and conversations in writing

Farmers should keep a diary of every conversation they have with creditors. A short notation in a diary of the date and significant details of the conversation can help farmers remember dates and details.

If anything important is said in a telephone call or in a meeting with a creditor, the best strategy is to write a letter to the creditor immediately. The name of the person spoken with should be mentioned along with the date of the call or meeting and what was said. The letter should also include a statement that the understanding of the conversation described in the letter will be presumed correct if no written response is received in "x" number of days.

III. Getting help — attorneys and advocates

While the aim of this book is to provide a basic understanding of farm lending issues, it is still important to talk with an experienced attorney or farm advocate about how to handle a specific problem. The law is filled with exceptions and details—and the situation of every farmer is always different—so this book can never be a substitute for an experienced look at a farmer's individual case.

This book cannot be a substitute for an experienced attorney or advocate. Each farmer's situation is different and needs an experienced person to look at its specific details.

A. Minnesota Farm Advocates

Located throughout the state are Minnesota Farm Advocates. Advocates are experienced in assisting farmers in financial crisis. They are trained in negotiating with creditors, have a good understanding of creditors' policies, can help farmers identify legal issues, and can help farmers decide if they need to talk with an attorney. If an attorney is needed, advocates can usually refer farmers to one experienced in working with family farmers in financial difficulty. Advocates are also experienced in assisting farmers with financial records, such as cash flows and balance sheets, that are needed during negotiations with lenders and government agencies. Advocates are especially helpful in preparing farmers to participate in farmer-lender mediation. Because Minnesota Farm Advocates are supported by grants and the state legislature, their services are available at no cost.

To find an advocate, call the Farm Advocate Program Administrator at 1-800-967-AGRI (2474).¹

B. Attorneys

There are times when debt problems are serious enough and the stakes high enough that farmers need legal advice.² An experienced attorney should be able to explain how the laws affect a farmer's individual situation, give legal advice on which choices best fit the farmer's goals, draft the legal papers needed, and, if necessary, represent the farmer in court.

1. Looking for an attorney

There are several things to look for in an attorney. If the farmer does not know the attorney, it makes sense to ask for references from other farmers and friends. A few suggestions about picking an attorney follow.

a. Experience in helping farmers

Because legal work in the farm area is complicated, experience is necessary. At a minimum, the attorney should be able to consult with someone with more experience. An experienced attorney should be happy to give references from other farmers.

1 Additional information is available at: <http://www.mda.state.mn.us/commissioner/fadvoweb.htm>.
2 Stephen Carpenter and Randi Ilyse Roth, *Family Farmers in Poverty: A Guide to Agricultural Law for Legal Services Practitioners*, 29 CLEARINGHOUSE REVIEW 1087 (Apr. 1996); Carl Flink, *Finding a Place for Low-Income Family Farmers in the Legal Services Equation*, 35 CLEARINGHOUSE REVIEW 677 (Mar.-Apr. 2002); Larry R. Spain, *The Opportunities and Challenges of Providing Equal Access to Justice in Rural Communities*, 28 WM. MITCHELL L. REV. 367 (2001), available at http://www.wmitchell.edu/lawreview/volume28/issue1/12_spain.pdf.

b. Willing to sometimes say they don't know

No matter how good attorneys are, they will not know the answer to everything. Legal work in the farm area is complex. Good attorneys answer some questions by saying they do not know or will need to look it up. Be wary of someone who has a smooth answer to every possible question.

c. Trustworthiness

Trust may be the most important thing when choosing an attorney. A farmer must trust the attorney with private financial documents and must be willing to explain all of the facts to the attorney—even those which might seem embarrassing.

d. Reliability

Much of an attorney's work depends on meeting strict deadlines. Reliability is therefore extremely important.

2. Be clear about the work to be done and the cost

Private attorneys can be very expensive, and fees vary a great deal. A farmer working with an attorney needs to be sure of exactly what work the attorney will be doing and how much it will cost. While the final bill cannot always be predicted very easily, the attorney should be willing to give a good idea of what to expect.

C. Legal referrals

Legal Services attorneys can sometimes provide free legal help to low-income farmers. The Minnesota Family Farm Law Project (MFFLP) is a program that provides legal assistance to financially distressed family farmers in Minnesota in conjunction with the offices of Southern Minnesota Regional Legal Services (SMRLS), Mid-Minnesota Legal Assistance (MMLA), and Legal Services of Northwest Minnesota.³ MFFLP services are free or provided at a reduced cost to eligible farmers. In general, priority is given to cases to prevent foreclosure on family farm homesteads and repossession of farm machinery, equipment, livestock, crops, and real estate that are necessary to the farm operation. In addition, priority is given to cases to secure the release of income from farm production and/or obtain the extension of credit for family living and farm operating expenses. Legal services offices providing assistance in farm cases can be found in:

St. Cloud:

St. Cloud Area Legal Services
1-888-360-2889 and 320-253-0121

Willmar:

Western Minnesota Legal Services
1-888-360-3666 and 320-235-9600

Mankato:

Southern Minnesota Regional Legal Services
1-800-247-2299 and 507-387-1211

Worthington:

Southern Minnesota Regional Legal Services
1-800-233-0023 (within 507 area code only)
and 507-372-7368

Winona:

Southern Minnesota Regional Legal Services
1-800-372-8168 and 507-454-6660

Moorhead:

Legal Services of Northwest Minnesota
1-800-450-8585 and 218-233-8585

³ Additional information is available at: <http://www.mnlegalservices.org/familyfarm/>.

Brief legal advice and referrals are available to all Minnesota farmers from Farmers' Legal Action Group, Inc. (FLAG) at 1-800-233-4534 and 651-223-5400. A list of FLAG's publications can be found in Appendix B and on the web at <http://www.flaginc.org>. The Minnesota State Bar Association has a statewide referral service for people needing an attorney: 1-800-292-4152.⁴

IV. What this book covers

This book discusses some of the most important types of credit farmers use and some of the specific problems that may arise if farmers have difficulty paying a debt. One set of terms should be defined at the beginning: the law most often describes the parties in a credit relationship as the debtor and the creditor. The debtor is the person who owes the money. In general, this book assumes that the debtor is a farmer. The creditor is the person to whom the debt is owed.

Debtor — The person who owes money. This book assumes that the farmer is the debtor.

Creditor — The person to whom the debt is owed.

An explanation of the chapters in this book follows.

A. Some agreements must be in writing

Many agreements can be perfectly legal and enforceable even if they are not in writing. For some types of agreements, however, the law requires that the agreement be put in writing to be enforceable. Chapter Two gives a brief summary of the law covering these agreements.

B. Real estate debt

The most common arrangements for farm real estate debt are mortgages and contracts for deed. After a default, mortgages may be foreclosed and contracts for deed may be canceled. Sometimes this requires a court action, but more often the foreclosure or cancellation may go ahead without the creditor needing to go to court. A foreclosure can also lead to a money judgment against the debtor for any amount not recovered from the foreclosed property. Along the way farmers may have statutory rights—a "right of first refusal" and "a right of redemption"—which may allow the farmer to keep part or all of the land. These topics are discussed in Chapter Three.

C. Secured credit

Much farm operating credit is provided by creditors who require farmers to provide "security" for the debts. That is, the farmer signs an agreement allowing the creditor to take some of the farmer's property if the farmer does not pay the debt. These secured debts are largely governed by Minnesota's version of the Uniform Commercial Code (UCC), which was revised effective

4 Additional information is *available at*: <http://www.mnbar.org/attref-public.htm>.

July 1, 2001. Some creditors may automatically get a security interest in a farmer's property under the provisions of state law. These "statutory liens" include landlord's liens and mechanics' liens. Secured credit, operating loans, and statutory liens are discussed in Chapter Four.

D. Unsecured credit

Many creditors do not have a security interest in debtors' property. In other words, although the debtor owes the creditor money, the debtor has not given the creditor the legal right to take the debtor's property in case of a default. These creditors still have a legal remedy if the debtor defaults. An unsecured creditor may file a court action against the debtor, win a judgment against the debtor for the amount of the unpaid debt, and obtain a "judgment lien" against the debtor's property for the amount owed. Judgment liens can lead to garnishments, sheriff's levies, and other creditor actions to collect the debt. Unsecured credit is discussed in Chapter Five.

E. Leases

Farmland, equipment, and livestock are now often leased. Chapter Six discusses leases and some of the problems farmers may face using them.

F. Mediation

Farmers who have difficulty with their creditors often have the chance to use Minnesota's farmer-lender mediation program. Chapter Seven discusses mediation and how it can be helpful to farmers.

G. Bankruptcy

For some farmers in financial distress, bankruptcy may be the best option. While some bankruptcies lead to liquidation of the farming operation, others are designed to keep family farmers on the land. Chapter Eight summarizes these options.

H. Taxes

Farm taxes are complicated and are not discussed in this book in any detail. Chapter Nine, however, gives some basic information about the way a farmer's credit situation may affect income taxes.

I. Alternative Dispute Resolution (ADR)

All civil lawsuits filed in Minnesota district courts are subject to an Alternative Dispute Resolution (ADR) requirement. Chapter Ten summarizes how the ADR requirement may affect farmers' debtor-creditor relationships.

J. Scam artists targeting farmers

Chapter Eleven briefly discusses some of the unscrupulous practices used by scam artists targeting farmers in difficult financial circumstances.

Chapter Two

Some Agreements Must Be In Writing: The Statute of Frauds

I. Introduction

Many agreements and contracts are legal and enforceable even if they are only made orally. Leaving no written record of such agreements may bring other problems, but as a matter of law they are as legal as the longest and most detailed written contract.¹

Some agreements, however, must be in writing to be enforceable. Laws imposing this requirement are generally called “statutes of frauds.” Minnesota’s version of the statute of frauds requires that certain kinds of agreements be in writing. In general, for a written agreement to serve as a binding contract, it must set out the names of the parties involved, the subject matter and terms and conditions of the contract, and the “consideration”—which means the money, service, or some other thing of value being offered as payment—and must be signed.²

II. What agreements must be in writing

Several types of agreements must almost always be in writing to be legally enforceable. These include:

A. Agreements that cannot be completed within one year

If it is not possible for the actions required by the contract, by its own terms, to be completed within one year, the agreement must be in writing.³ Technically, the question is not whether the agreement was actually completed in that year, or how long the parties thought it would take to complete it, but rather whether or not completion of the contract within one year was possible.⁴

1 See, for example, *Larson v. Archer-Daniels-Midland Co.*, 32 N.W.2d 649, 653-54 (Minn. 1948). In *Bergstedt, Walhberg, Berquist Assoc. v. Rothchild*, 225 N.W.2d 261, 263 (Minn. 1975), the Minnesota Supreme Court held that no legal distinction is made in the effect of an enforceable promise as expressed in writing, orally, in the acts of the parties, or in a combination of means.

2 Minn. Stat. §§ 336.2A-201, 513.01. In general, it is the signature of the party who is being forced to fulfill his or her obligations under the contract that must be included.

3 Minn. Stat. § 513.01(1).

4 Minn. Stat. § 513.01(1); *Bussard v. College of St. Thomas, Inc.*, 200 N.W.2d 155, 161 (Minn. 1972).

B. Agreements to transfer land

Agreements concerning the transfer of any interest in land, no matter how limited that interest may be, must be in writing.⁵ The only exception to this rule is that a real estate lease of one year or less is not required to be in writing.⁶

C. Lease of land for more than one year

The lease of land for more than one year must be in writing. Lack of a written agreement makes the contract void, not just unenforceable.⁷ "Void" means it is as if the contract does not exist, while "unenforceable" means one party cannot compel the other party to abide by the contract. Leases are discussed in more detail in Chapter Six.

D. Lease of goods with total payments of \$1,000 or more

An agreement to lease goods with total payments of \$1,000 or more must name the parties to the lease, must be signed by the party that is attempting to avoid the contract, and must describe the goods leased.⁸ Leases are discussed in more detail in Chapter Six.

E. Agreements to lend money in the future

A person may not sue to enforce a credit agreement unless the agreement is in writing.⁹ For example, borrowers claiming that a bank promised to advance additional funds to the borrowers in the future must have the agreement in writing before they can try to force the bank to actually loan the money.¹⁰

F. Sale of goods for \$500 or more

An agreement to sell goods for a price of \$500 or more must be in writing to be enforceable.¹¹ In general, to qualify as "goods," the things to be sold must be movable and may not be services.¹² A written agreement is not required, however, if the goods were specially manufactured for the buyer, the buyer admitted that there was an agreement, the buyer accepted and paid for the goods, or the seller accepted payment for the goods.¹³

G. Most security agreements

Security agreements must be in writing to be enforceable against the debtor and other creditors unless the creditor has possession of the collateral.¹⁴

5 Minn. Stat. §§ 513.04, 513.05.

6 Minn. Stat. §§ 513.04, 513.05.

7 Minn. Stat. § 513.05; *Bruder v. Wolpert*, 227 N.W. 46, 47 (Minn. 1929).

8 Minn. Stat. § 336.2A-201.

9 Minn. Stat. § 513.33; *Rural American Bank v. Herickhoff*, 485 N.W.2d 702 (Minn. 1992); *Drewes v. First Nat'l Bank*, 461 N.W.2d 389 (Minn. Ct. App. 1990).

10 *Moody v. Citizens State Bank*, No. C3-02-275 (Minn. Ct. App. Aug. 13, 2002) (unpublished).

11 Minn. Stat. § 336.2-201(1).

12 Minn. Stat. §§ 336.2-105, 336.2A-201(1).

13 Minn. Stat. § 336.2-201(3).

14 Minn. Stat. §§ 336.9-203(b), 336.9-102(a)(73).

H. Others

Other agreements that generally must be in writing include a promise to be responsible for another's debt or to pay a discharged or released debt,¹⁵ an agreement to submit any dispute to binding arbitration,¹⁶ and an agreement setting interest at over 6 percent annually.¹⁷

III. If the agreement is not in writing

In general, failure to put in writing an agreement that falls under the statute of frauds means that the contract is unenforceable.¹⁸ Although the parties are *permitted* to carry out such an agreement even when there is no written contract, because the oral agreement is unenforceable, neither one could go to court to *force* the other party to fulfill his or her promises.¹⁹ There are exceptions to this rule, however. If the parties acted as if the contract were valid, for example, and one or both parties at least partially fulfilled the contractual promises, the contract may be enforceable even if it is not written down.²⁰

15 Minn. Stat. § 513.01(2), (4).

16 Minn. Stat. § 572.08.

17 Minn. Stat. § 334.01. See Appendix A for a short discussion of limits on interest rates.

18 *Royal Realty Co. v. Levin*, 69 N.W.2d 667, 671-72 (Minn. 1955); 44 DUNNELL MINN. DIGEST, *Statute of Frauds*, § 5.01 (4th ed. 1999).

19 *Royal Realty Co. v. Levin*, 69 N.W.2d 667, 671-72 (Minn. 1955).

20 *In re Guardianship of Huesman*, 354 N.W.2d 860, 863 (Minn. Ct. App. 1984).

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