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**Dealing with Legal Liability
Issues: A How-to-Guide for
Protecting Yourself and Your
Farm**

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Protecting your interests...


- Ag Liens- Iowa Contract Finisher's Lien (Commodity Contract Lien) (includes Beef Cattle, Dairy Cattle, Hogs, Sheep)
 - Ch. 579B Iowa Code
 - Revisions to Art. 9- UCC- tried to bring clarity and certainty to perfection, priority and enforcement of security interests- ag liens are included and Iowa has adopted its own version of the UCC
 - Must have established a production contract (oral or written)
 - This lien beats all others in priority (except for veterinarian lien)
 - Lien is on the livestock sold or slaughtered by contractor, lien is on the cash proceeds if contractor sells prior to the time
 - Amount of lien is the amount owed to contract producer under terms of contract



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Perfecting a Lien


- Be proactive- Iowa Code 554.9302- You want to perfect a lien in the jurisdiction where the collateral is- What if it moves to another state?
 - Perfect in that state
- File a Ch. 579B lien with the Iowa Secretary of State
- The financing statement can now be filed online
- www.sos.state.ia.us
- Look for Business Services



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Timeline for filing


- Contract finisher's lien becomes effective when...
- Livestock arrives on property, but you must perfect
 - Unless the contract provides for continuous arrival (meaning arrival on monthly basis or more frequently), the producer files a financing statement for the livestock within 45 days after livestock's arrival
 - If continuous arrival, file financing statement 180 days after livestock's arrival
 - Lien terminates one year after livestock no longer under authority of contract producer (when livestock leaves the facility)



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Priority Issues


- An agricultural lien has priority over other types of liens if the state statute says so
- In Iowa, we put a preference on ag liens
- Contract producer is the secured party and the contractor is the debtor



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Ag Supply Dealer's Lien


- Iowa Code Section 570A – Claimant of this lien is an ag supply dealer engaged in retail sale of ag supplies to farmers.
- Property attached is crops and livestock produced using the ag supplies
- File with Secretary of state
- Lien attaches on date lien statement is filed
- This lien is superior to subsequent liens, except liens of other ag supply dealers, landlords, etc.
- Equal to prior perfected lien or security interest of financial institution



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Ag Supplies


- Includes ag chemicals, seed, feed, or a petroleum product that is used for an ag purpose



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How it works

- Ag dealer sends certified request to financial institution which has loan with farmer or security interest, prior to or upon sale of supply on a credit basis to farmer. (Farmer has to sign waiver of confidentiality for this)
- Bank must respond within four business days with a memo stating whether or not the farmer has sufficient net worth or line of credit to assure payment
- If no sufficient net worth, bank transmits financial history to dealer.
- If sufficient, the memo is irrevocable and unconditional letter of credit to benefit ag supply dealer for 30 days following date of final payment



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What if bank doesn't respond?

- If bank doesn't respond and request from dealer was proper or if no sufficient net worth, then ag supply dealer must make a choice
- May file lien anyway
- Lien applies to crops and livestock

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Perfecting the lien

- Lien becomes effective upon purchase of ag supply
- To perfect, ag supply dealer must file financing statement with Sec of State within 31 days after purchase

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Priority of Lien


- If lien is properly perfected, lien shall have priority over a lien or security interest that applies after the time that the lien was perfected
- Lien will have equal priority to a lien or security interest which was perfected prior to time of ag supply dealer's lien
- Landlord's Lien (for leasing landlords) that is perfected (must be filed now) has priority over conflicting ag supply dealer's lien
- Lien in livestock feed has priority over earlier perfected lien to extent of difference between acquisition price of livestock and FMV of livestock at time lien attaches or sale price of livestock, whichever is greater.

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A cautionary tale...


- **Berger v. Cas' Feed Store (Iowa 1998)**
 - Facts: Farmers made prepayments to feed store for inputs to be delivered in spring. Farmers didn't know Coop was indebted to bank. Bank seizes prepayments.
 - Findings: Court says no "constructive trust" with farmers that prepayments would be used to ensure delivery. Funds were not separated into a separate account. Bank had a legal right to seize funds.
 - Court held that the farmers were knowledgeable and experienced business persons and should have known the inputs
 - Problem: Bank made loans to farmers for the inputs



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Bankruptcy


- If you are considering this option...
 - Will you have a manageable debt load within three years?
 - If not, what are your options?
 - Talk to your lender
 - Non-bankruptcy workout
 - Ch. 12- Family farmer bankruptcy
 - Definition of "family farmer"



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General Farm Liability Insurance Policies


- Insurance companies make money by paying out less in claims than they receive in premiums
 - Accomplished by careful drafting language
 - An insurance policy is a contract
 - Always read and understand all terms in your policy before signing
 - Attempt to negotiate any unfavorable terms



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An example of insurance contract language...


- *Simon v. Krogmann (Iowa Ct. App., Dec. 17, 2008)*
 - Facts: Cattle owner placed cattle with another farmer to care for until marketed. Cattle counted as they came off the delivery trucks and when they were loaded.
 - Owner had insurance policy providing for "theft," but there had to be evidence
 - No coverage if the loss was discovered upon taking inventory
 - If the insured actually saw the cattle being stolen, even if there was substantial evidence



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Simon v. Krogmann


- At trial, the jury found that the evidence was substantial enough that the policy exclusion didn't kick in
- Iowa Ct. of Appeals: Evidence was enough to show that the loss of the cattle was discovered before taking inventory
- Bottom Line: Always read your policy, make sure terms are defined



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Pollution Exclusion


- Iowa Case- *Bituminous Casualty Corp v. Sand Livestock (Iowa 2007)*
 - Facts: A hog confinement builder constructed a facility in Ida County. During construction, he installed propane power washer in washroom. Employee overcome by carbon monoxide and died. Widow sued for wrongful death. Builder requested his insurance company defend him.
 - Insurance company refuses to defend
 - Policy said that it didn't cover bodily injury which occurred because of escape of pollutants.
 - Does this situation fit under the pollution exclusion clause?



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Outcome of the case...


- Iowa Supreme Court asked whether the carbon monoxide was a "pollutant" under the policy. Builder argued that a reasonable policyholder would expect the pollution exclusions to prevent coverage for certain situations, but not for the wrongful death claim based on negligent design. But, they didn't present this issue before the court.
- Court says that pollutant was broadly defined and carbon monoxide was a pollutant
- What are your reasonable expectations as an insured?
- States differ: Illinois S.C. says that carbon monoxide isn't covered under pollution exclusion



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Duties of Growers


- What are the duties of a grower in the event of a loss?
 - Depends on Contract
 - Can be liable under a common law theory



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Additional Coverage for Contract Finishers

- How much coverage is enough?
- Who is the named insured?
 - Add both contract finisher and supplier
- Have you thought about business interruption insurance?
 - Does it apply if you lose your contract?
- Think about purchasing insurance with the same company (both supplier and finisher) to avoid legal battles and lapse in coverage




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**Iowa Fence Law and Boundary
Issues**

Who is liable?

- Issues involving partition fences are the cause of many disputes amongst Iowa's landowners
- Partition fences mark property boundaries between adjacent landowners
- Iowa has numerous statutes that govern fencing matters
- Will the legislature make a change to the laws this year?




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Partition Fences

Is there a duty to erect and maintain fences?


- In Iowa, a landowner does not have a legal duty to build a partition fence
 - One exception: Iowa Code 169C.6
- However, a landowner can be compelled to contribute to the creation or maintenance of a partition fence upon the written request of an adjacent owner (Iowa Code 359A.1)



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**Compelling a landowner to
contribute**

- A landowner can also be compelled to build or maintain a partition fence on the basis of an agreement— such as the utilization of the “right-hand rule”
 - What is the “right-hand rule”? An informal arrangement by which the landowners face one another at the mid-point of the fence and agree to maintain their share of the fence to their respective right-hand sides



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Written Fence Agreements

☉For an agreement that details the allocation of fence maintenance and/or construction, two options exist:

1. Adjacent owners can enter into a written agreement, or
2. Adjacent owners can request an order from the fence-viewers (township trustees) allocating responsibility between the parties



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Why Draft a Written Agreement?

☉Iowa law does allow owners of adjoining parcels to file an agreement with the county recorder of deeds to make an agreement **binding**

- Upon recordation, the agreement is binding upon the original parties, their heirs and subsequent owners
- If adjacent owners can't come to a mutual agreement, the fence viewers can be called upon to settle the dispute




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Township Trustee Duties

☉Township trustees are elected and are authorized by state law to act as township trustees to :

- Decide partition fence controversies, and
- Render opinions that will be binding upon current and subsequent owners




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**Fence Dispute Resolution
Process**

☉If the statutory process is invoked, a four step process is involved:


- Step One: the complaining landowner must make a written request to the other landowner for the erection of a fence
- Step Two: if Step One doesn't resolve the matter, the complaining landowner must make a formal request to the township trustees to resolve the dispute



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Statutory Process (cont'd)

- Step Three: the trustees must give five days written notice to all adjoining landowners that are liable for the erection or maintenance of the partition fence concerning time and place of the hearing
- Step Four: the fence viewers meet and issue a written order that allocates responsibility for maintenance or erection of the partition fence




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How is responsibility divided?

☉Fence Viewers are to divide responsibility for building and maintaining partition fences equally between the parties regardless of which party gains primary benefit from the fence construction

- The decision of the fence viewers is binding
 - ☉However, a landowner can appeal to the local district court by filing a notice of appeal within 20 days after the fence viewers decision, and filing an appeal bond




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Landowner's Duties

Absent an appeal, landowners must construct or maintain their assigned portion of fence as decided by the fence viewers

- If a party fails to comply, the disaffected landowners can request that the fence viewers build or maintain the fence
 - But, the parties requesting the work must pay a deposit to cover the expenses to be reimbursed upon collection from the defaulting party
 - If payment is not made, the amount will be assessed as property taxes on the disputed property



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What kind of fence can be required?

Iowa law generally requires the erection of a "legal" fence.

- What qualifies as legal?
 - Most common- three barbed wires
 - Rails and boards may also be used
 - If a landowner pastures sheep or swine, a fence can also be required to be "tight"
 - A "tight" fence requires the landowner to add woven wires to the partition fence




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Partition Fences and Livestock Owners

A farmer has a responsibility to fence in their own livestock, as Iowa is a common-law, fence-in jurisdiction


- However, Iowa does follow a conditional fence-out theory:
 - If an animal escapes as a consequence of negligent fence maintenance by adjacent landowners, the neighboring landowner will not be able to recover damages to their property by the trespassing animal
 - Placing the duty on the non-livestock owner to maintain their portion, limits the overall reach of the fence in these cases



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Livestock Owner Duties

- They must fence and control animals under their care
 - An owner is liable for the damages caused by their trespassing animals, if the trespass is caused by the owner’s own negligence
 - “Distrain” may also come into play: allows a person to take possession of trespassing livestock until the costs of “distrain” are paid (i.e. keeping and caring for the livestock and damages)




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Livestock Owner Liability

An owner may be liable for damages to third parties, such as:


- Motorists who suffer harm from trespassing animals
 - There is a common-law duty in Iowa to prevent animals from entering a public roadway despite the fact the formal fence-in statute was repealed in 1994 (See *Klobnak v. Wildwood Hills, Inc.*, 688 N.W.2d 799)



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Duty of Care

- A livestock owner has a duty of ordinary care to prevent injuries and is liable to the extent that injuries were reasonably foreseeable
 - 2004 Iowa Supreme Court- a ranch failed to inspect fence and take necessary precautions to protect motorists from stray horses
 - Ranch argued that the statutory repeal of the fence-in requirement relieved them of this responsibility
 - Court disagreed, noting that the common law imposed a duty of reasonable care upon livestock owners to restrain livestock



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Additional Responsibilities


- Adjacent landowners may also be liable if a trespass results from negligent maintenance of a partition fence
 - If no legal duty to construct a fence exists, adjacent landowners will not incur liability
 - If a legal duty exists from a written agreement or order of fence viewers, negligence by adjacent landowner can lead to liability for damage to third parties



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Additional Responsibilities (cont'd)


- If both parties fail to maintain a fence, resulting in third party injury, negligence will be a jury question
- In lease situations, Iowa courts have held that landlords bear no responsibility for damage caused by a tenant's livestock



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Iowa's "Habitual Trespass" Statute

- ⦿ A "habitual trespass" occurs when livestock escape their enclosure at three times in a 12-month period and trespass onto the same neighboring landowner or the same public road each time
 - In that event, the local government may make a finding as to whether the trespass occurred
 - If so, the disaffected neighboring landowner can make written request of the livestock owner that they build a fence
 - If not built within 30 days of request, matter can be submitted to fence viewers
 - Neighboring landowner not liable to build fence



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Fence Location

- What if a fence has been improperly located?
 - If fence has been treated as the boundary by the adjacent landowners there is a strong interest in allowing the fence to remain
 - Iowa law recognizes this concern and allows a misplaced fence to continue to serve as the legal boundary, irrespective of what a subsequent survey may indicate is the true boundary

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“Boundary by Acquiescence”

- In Iowa, once a fence has been utilized as the boundary for a period of 10 years, the fence can establish the boundary even though a later survey indicates the fence is not on the surveyed line
 - Known as “boundary by acquiescence”
 - The adjacent owners didn’t know where the true property line was, but simply acquiesced in the existing fence line as the actual boundary (by farming or grazing)

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**“Boundary by Acquiescence”
(cont’d)**


- Once a court determines that, based on the evidence, the fence has been treated as a boundary for 10 years, the fence becomes the true boundary
 - Similar concept: a misplaced fence can become the true boundary via a prescriptive easement

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What is a “prescriptive easement”?


- This type of easement can arise when the adjacent owners know where the true boundary is, know that the existing fence is not on the line, but continue to use the fence as the property line
 - In this situation, one adjacent owner is actually allowing the other to use some of their property that they wouldn’t otherwise be able to use if the fence were in the correct location



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Establishing a Prescriptive Easement


- The party that is benefiting from the misplaced fence can establish the easement by showing that:
 - They have *openly* and *notoriously* possessed the land;
 - *Adversely* under a claim of right, and;
 - Have had *continuous and exclusive* use for the statutory period (10 years)



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Open and Notorious Possession


- Requires that a landowner have used the property in a similar fashion as the true owner
 - Established by acts such as improving or maintaining the land
 - That possession be adverse and under a claim means that the landowner has made an innocent mistake in locating the boundary and believed that the fence was on the proper location when erected



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Continuous and Exclusive Use


- Requires that a landowner's use has not interrupted by another party for the statutory period- 10 years
- Exclusive use not required, as "mere casual intrusion by others on the property" does not invalidate the continuity required for establishment
- If the elements are established, the fence will continue to serve as the border



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Constitutional Issues


- Constitutionality of requiring a landowner to erect and maintain partition fences has been questioned in recent years
 - As society becomes more urban, the validity of fencing statutes will likely be challenged more frequently
 - Some states take the position that compelling a property owner that doesn't own livestock to contribute to building or maintenance is unconstitutional
 - 5th Amendment grounds as a taking of private property without "just compensation"



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Iowa Supreme Court


- Court has held it constitutional to require landowners to share in the expense of creating a partition fence
 - In a 1995 case, an urban resident complained that requiring contribution for a fence that provided him no benefit was unconstitutional
 - Court disagreed- Iowa is an agricultural state and the burden on the non-livestock owner was minimal



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Conclusion

- “Good Fences Make Good Neighbors”
 - To avoid fencing disputes, the best practice is to maintain communication with neighbors
 - Also helpful to have an understanding of Iowa law
 - Remember that potential conflicts can be resolved in advance through written fence agreements
 - If a writing doesn't work, the fence viewers may be called in
 - Regardless, fences will continue to aid the agricultural interest of Iowa for the foreseeable future



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Thank you!

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