Farm Tenancies

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1. Farm Tenancies.

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

> "In the case of a farm tenancy, the notice must fix the termination of the farm tenancy to take place on the first day of March, except in cases of a mere cropper, whose farm tenancy shall terminate when the crop is harvested. However, if the crop is corn, the termination shall not be later than the first day of December, unless otherwise agreed upon."
>
> Also, see Iowa Code §562.6:
>
> "If a written agreement is made fixing the time of the termination of a tenancy, the tenancy shall terminate at the time agreed upon, without notice. Except for a farm tenant who is a mere cropper or a person who holds a farm tenancy with an acreage of less than forty acres where an animal feeding operation is the primary use of the acreage, a farm tenancy shall continue beyond the agreed term for the following crop year and otherwise upon the same terms and conditions as the original lease unless written notice for termination is served upon either party or a successor of the party in the manner provided in section 562.7, whereupon the farm tenancy shall terminate March 1 following. However, the tenancy shall not continue because of an absence of notice if there is default in the performance of the existing rental agreement."

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

Iowa Code §562.1A defines a farm tenancy as "a leasehold interest in land held by a person who produces crops or provides for the care and feeding of livestock on the land, including by grazing or supplying feed to the livestock." This section also defines an animal feeding operation the same as defined in section 459.102 ("a lot, yard, corral, building, or other area in which animals are confined

and fed and maintained for forty-five days or more in any twelve-month period, and all structures used for the storage of manure from animals in the operation. Except as required for a national pollutant discharge elimination system permit required pursuant to the federal Water Pollution Control Act, 33 U.S.C. ch. 26, as amended, an animal feeding operation does not include a livestock market.")

Foster v. Schwickerath, 780 N.W.2d 746 (Iowa Ct. App. 2009). Landlord notified tenant of termination of the tenancy before Sept. 1, but the notice stated the tenancy would terminate at the end of the calendar year. The court noted that the notice of termination of farm tenancy must fix the termination on the first day of March. However, even though the notice improperly set the termination date at the end of the calendar year, the court ruled that a wrong termination date did not nullify the notice and that the notice of termination was valid for a termination date of 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 485-486. The court ruled that a farm tenancy continues year to year until notice of termination is given. *Id.*

c. Effect of Tenancy on Forfeiture or Foreclosure

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

In *Jamison v. Knosby, 423 N.W.2d 2 (Iowa 1988),* a contract vendee entered into a three-year lease with a third-party tenant just prior to defaulting on the underlying installment real estate contract. The lease was recorded with the county recorder. The contract vendor attempted forfeiture of the real estate contract by serving the contract vendee with notice of forfeiture. However, the tenant was not served. The tenant considered the forfeiture ineffective because he had not been served with notice of forfeiture of the real estate contract or notice of termination of farm tenancy. *Id.* at 4. The contract vendor considered the tenant's rights extinguished by the forfeiture. *Id.* The court ruled that the tenant was a person in possession of the farm and "[f]ailure to serve notice of forfeiture on a person in possession under Iowa Code section 656.2 renders the forfeiture ineffective. *Fulton v. Chase, 240 Iowa 771, 773-74, 37 N.W.2d 920, 921 (1949).*" *Id.* at 5.

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

In *Kansas City Life Ins. Co. v. Hullinger, 459 N.W.2d 889 (Iowa App. 1990)* a foreclosing creditor failed to terminate a farm tenancy created by the appointed receiver. The creditor contended that the filing of the foreclosure petition and its subsequent indexing

in the *lis pendens* index provided the tenant with constructive notice of the foreclosure. *Id.* at 891. However, the court upheld the tenant's rights under the lease.

4) Exceptions to Notice Requirements.

a. Sharecropper

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

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

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

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

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

Senate File 316 effective July 1, 2013 amended Iowa Code §562.6 (Agreement for Termination) which requires written notice of termination of farm leases by Sept. 1 of the final year of the lease. This legislation eliminated the long-standing exemption to the Sept. 1 farm rental termination notice requirements for farms of less than 40 acres, with one exception. To avoid impacting hog barn, cattle feedlot or other animal feeding operation leases, the amendment does not apply to farms of less than 40 acres where the primary use is an animal feeding operation as defined by Iowa Code §459.102. An animal feeding operation is a lot, yard, corral, building or other area where livestock are confined and fed and maintained for 45 days or more in a 12-month period. An animal feeding operation does not include pasture or any other area where there is vegetation, forage growth or crop residue.

In summary, after July 1, 2013, written notice must be given by Sept. 1 of the final year of a farm lease to terminate the lease for the following crop year for all farm leases, except for farms of less than 40 acres where the primary use is an animal feeding operation. Pastures are not animal feeding operations and therefore pasture leases, as well as crop leases, of less than 40 acres are now 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. In *McElwee v. Devault, 120 N.W.2d 451 (Iowa 1963)*, the landlord notified the tenant of several defaults of the lease in the middle of the first year of a three-year lease. The court supported eviction of the tenant and found that the tenant's actions, "while not a flagrant violation of the lease" were nonetheless violations and the landlord was fair in giving timely notice to the tenant. *Id.* at 454. The court seemed to indicate that the decision might have been different if this had been a one-year lease when it noted that the landlord should not have to put up with such a tenant for the remaining two crop years of the lease.

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

e. Agreement to Terminate

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

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

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

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

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

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

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

f. Waiver and Estoppel

The parties to a farm lease may also waive their rights to statutory notice of termination. In *Laughlin v. Hall, 20 N.W.2d 415 (Iowa 1945)*, the court ruled noted that when the landlord told the tenant she would get another tenant, the tenant did not object and in fact agreed that it was best for the landlord to get another tenant. *Id.* The court ruled that the tenant consented to the lease to the new tenant and waived statutory notice of termination *Id.* at 417.

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

"Upon the termination of a life estate, a farm tenancy granted by the life tenant shall continue until the following March 1 except that if the life estate terminates between September 1 and the following March 1 inclusively, then the farm tenancy shall continue for that year as provided by section 562.6 and continue until the holder of the successor interest serves notice of termination of the interest in the manner provided by section

562.7. However, if the lease is binding upon the holder of the successor interest by the provision of a trust or by specific commitment of the holder of the successor interest, the lease shall terminate as provided by that provision or commitment. This section does not abrogate the common law doctrine of emblements."

Iowa Code section 562.10, Rental value, provides:

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

Iowa farm lease appellate court decisions:

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

(2) *Wischmeier Farms, Inc. v. Wischmeier,* No. 15-0221 (Iowa Ct. App. April 6, 2016). This case involved a family dispute over a farm lease agreement. The lease was a 10-year crop-share lease executed between the Plaintiff farm corporation and the defendant who was the Plaintiff's son. The principal in the farm corporation was the father who died two years into the lease term. Following his death, the non-farming siblings took control of the corporation and filed suit contesting various provisions in the farm lease. On appeal the Court interpreted alleged ambiguities in an addendum to the standard ISBA form lease regarding the tenant's right to use the landlord's farm equipment on other land the tenant farmed that was not owned by the Landlord corporation and the tenant's obligation for maintenance of that equipment. The Court ruled that the lease did not restrict the use of the farm equipment on other land and that any ambiguity was to be construed against the drafter, the landlord. Further, the Court noted that the tenant had in fact used the equipment on other land prior to his father's death. The Court also ruled the landlord could not sell the equipment that the tenant used in his farm operation. The Court also ruled that maintaining the equipment included making repairs to the equipment. The Court also ruled that as is standard practice in crop share leases, fuel costs were part of machinery and equipment costs to be paid by the tenant and not a crop input to be shared 50-50. The Court then ruled that although the tenant's father had paid one-half of the grain hauling expense, the lease clearly required the tenant to pay this expense. The Court also interpreted a lease provision allowing the tenant to pasture cattle or till the land under lease as would be consistent with good

husbandry and "the best crop production that the soil and crop season permit" and rejected the landlord's claims that it could determine which land could be pasture or tilled. The Court then remanded the case to the trial court for a determination of attorney fees and costs under the lease's terms.

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

The relevant Iowa Code section 562.6 provides, in relevant part:
"Except for a farm tenant who is a mere cropper or a person who holds a farm tenancy with an acreage of less than forty acres where an animal feeding operation is the primary use of the acreage, a farm tenancy shall continue beyond the agreed term for the following crop year and otherwise upon the same terms and conditions as the original lease unless written notice for termination is served upon either party or a successor of the party in the manner provided in section 562.7." (underline added)
In Iowa Code section 562.1A(1) a "farm tenancy" is defined as:
"a leasehold interest in land held by a person who produces crops or provides for the care and feeding of livestock on the land, including by grazing or supplying feed to the livestock.

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

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

ruled that the legislature could not have intended to exempt animal feeding operations from the termination notice requirements but at the same time require termination notice for a tenancy that would be a farm tenancy because of one horse.

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

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

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

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

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

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

> ". . . Gumm had materially breached the lease by refusing to communicate with the plaintiffs regarding the farm operation; ignoring written and spoken directives regarding preparation of the real estate for planting, type of seed to be planted, and application of anhydrous, liquid nitrogen, and fertilizer; failing to seek authorization from the plaintiffs regarding expenses; failing to prepare the land and plant crops in a timely

fashion; and impeding the plaintiffs' right of entry and inspection. The court found that Gumm had no right, interest, or ownership of the crops harvested in the 2013 or 2014 crop year due to his material breach and his failure to cure the breach in spite of multiple opportunities to do so. The court terminated his lease and ordered Gumm to pay court costs and $1000 in attorney fees to both the Schillings and Hope K. Farms."

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

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

5) Practical Resources and Considerations regarding Farm Tenancies and Leasing:

a. 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. Another unique website of particular interest to some landowners and their attorneys is the Drake University Agricultural Law Center's Sustainable Agricultural Land Tenure Initiative. As stated on the homepage, "[t]his site is intended to assist landowners and farmers develop farm lease arrangements that are profitable and sustainable for the landowner, the farmer, the community, and the land." The site includes a guide entitled "The Landowner's Guide to Sustainable Farm Leasing."

b. Additional resources: Farm Lease Forms Available:
    i. Iowa Farm Lease Forms:
        1. Iowa Cash Rent Farm Lease (Short Form), available at http://www.extension.iastate.edu/AGDm/wholefarm/html/c2-16.html
        2. Iowa Cash Rent Farm Lease (Long Form), available at http://www.extension.iastate.edu/AGDm/wholefarm/html/c2-12.html
    ii. Midwest Forms:
        1. Midwest Plan Service Farm Lease Forms, available at https://www-mwps.sws.iastate.edu/
            a. Forms available: Cash Farm Lease, Crop-share or hybrid lease, irrigation crop-share or cash lease, pasture lease, farm building or livestock facility lease, farm machinery lease
    iii. North Central Farm Management Extension Committee Forms, available at http://aglease101.org/DocLib/default.aspx

6) Trends in farm leasing: There is a wealth of information available regarding farm lease statistics and information. Some good sources: Iowa State University Extension Ag Decision Maker Website, available at http://www.extension.iastate.edu/AGDm/wdleasing.html.

- Hybrid/Flex Lease: A flexible cash lease allows for the final rental rate to be determined by a formula that takes into account "actual yields" and "actual selling prices" available to the tenant during the crop year. Cash rents may be flexed for changes in crop price only, both crop price and yields, yields only, or flexing rent on changes in costs of inputs. An attorney might think about including some type of "Variable Cash Rent Agreement" section in the farm lease.
  - ii. Flex leases enable a landowner to share in the additional income and benefit in times of above-normal yields
  - iii. Risk may be reduced for the operator, but parties need to communicate and the flex leasing agreement needs to be in writing
  - iv. Additional reporting requirements
- Lease Supplements:
  - i. Tile and Drainage Improvements
    - (1) Lease Supplement for Use in Obtaining Tile and Drainage Improvements between Land Owners and Tenants, available at http://www.extension.iastate.edu/AGDm/wholefarm/html/c2-29.html
    - (2) In an agreement for tile and drainage improvements between Landlords and Tenants, the signers agree that the improvements (they agree upon and list in the written farm lease) will be completed on the described farm on or before a specific date listed.
    - (3) The Landlord and Tenant agree on who will pay the costs necessary to complete the improvement, who will provide labor, the estimated value of the project, and whether the tenant's contribution will reduce the cash rental rate. This agreement can be signed as a separate contract or a supplement to the written farm lease.
  - ii. Lease Supplement for Obtaining Conservation Practices and Controlling Soil Loss, publication available at http://www.extension.iastate.edu/AGDm/wholefarm/html/c2-08.html
    - (1) Landlord and Tenant agree to follow specific conservation practices that will control soil loss for a field or farm.
    - (2) Contains provisions relating to ground cover, cost-share payments available through the Natural Resource and Conservation Service (NRCS), soil loss limits, cropping practices that will be required by Landlord, such as contour planting and tiling, no-till on designated fields, etc.
    - (3) The purpose is to encourage cooperation between landlords and tenants to maintain conservation practices. The theory is that a tenant is not likely to make a significant contribution to soil conservation unless the costs are shared and tenant is assured repayment, etc.
  - iii. Investing in improvements
    - (1) The parties agree, in writing, on the improvements to be made to the property. The parties will want to agree to a rate of depreciation on the improvement and the estimated value of the tenant's investment. William Edwards, an extension economist at Iowa Statute University recommends that livestock production facilities are depreciated over 10-29 years at a rate of 5-10%. Machinery storage and grain bins should be

depreciated over 15-20 years at a 5-7% rate. Tile should be depreciated over 10-15 years at a rate of 7-10%. Fences should be depreciated over 15-20 years at an annual rate of 5-7%. Lime should be depreciated over 3-5 years at an annual rate of 20-33%.

(2) What are some typical improvements?
   (a) Farm structures and repairs
   (b) Limestone
   (c) Commercial fertilizer

- Checklist: Does your written lease discuss when and how rent will be paid and penalties for non-payment, sub-leasing of the property, assignment of the lease, insurance on the property and crop, FSA program payments, termination, reimbursement for crop nutrients, such as lime, default, operation and maintenance, good husbandry, settlement of differences, noxious weed control, prohibited farming practices, fencing, soil conservation provisions, etc.?
- Analyzing rights and duties of the landlord/tenant and how to handle restrictions on the property**:**

i. Hunting: Does the lease specify who is allowed to hunt on the property? Typically, the tenant is in possession of the property and would enjoy hunting rights. If the landowner wants to retain the right to hunt or possess the property in some way, they should negotiate a provision allowing for hunting in the farm lease.

ii. Fencing: Who is responsible for maintenance of fence? There should be a clear understanding. Typically, the tenant is in possession and would be responsible for the creation or maintenance of fences. Attorneys will want to familiarize themselves with their state's fencing laws. Is your state a fence-in or fence-out state?

- FSA Compliance:

i. Flexible cash rent leases and FSA Farm Programs. Significant increases in crop prices over the last year have farm landlords and tenants with cash rent leases interested in finding alternative cash rent lease arrangements that allow for a more equitable adjustment of rental rates than available under traditional flat cash rent leases without the detailed involvement by the landlord in traditional crop share lease arrangements.

Before entering into any alternative flexible cash rent leases, both parties must make sure their lease will qualify as a cash rent lease under FSA regulations. Under FSA regulations, cash rent tenants are entitled to all of the federal farm program payments while payments under crop share leases must be allocated between the landlord and tenant in the same ratio as the crop is divided. If the lease is reported to FSA as a cash rent lease (with the tenant receiving all program payments) but it does not meet FSA cash rent lease requirements, the tenant could be disqualified from receiving federal farm program payments and required to repay payments already received.

On April 2, 2007, FSA issued Notice DCP-172 to clarify what constitutes a cash rent or crop share lease under federal farm program payment regulations. The Notice gives examples of leases that qualify, and don't qualify. In general, if rent is linked to a farm's yield or crop revenue from the individual

farm, the lease is a crop share lease. However, if the flexible rental paid is based on factors not linked to the individual farm (for example, county average yields or an average price in the county or at a particular elevator, etc.), it should qualify as a cash rent lease. A copy of Notice DCP-172 may be found at: http://www.fsa.usda.gov/Internet/FSA_Notice/dcp_172.pdf.

ii. FSA Power of Attorney: FSA Form 211 is used to appoint someone to act on behalf of another as attorney-in-fact. Grantors must have their signature witnessed by an FSA employee or notarized. By signing the form, a landlord gives a tenant on the farm the ability to make most of the decisions with the FSA regarding farm programs. A cash rent landlord is not eligible for farm program payments because the tenant is deemed "at-risk" in this situation. FSA-211 Form available at, http://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/nrcs141p2_018134.pdf.

iii. FSA Payment Limitation Rules: Attorneys should be aware of the FSA provisions and modifications implemented under the 2008 and 2014 Farm Bill. Publication available at https://www.calt.iastate.edu/congress-passes-new-farm-bill

iv. Sodbuster/Swampbuster Compliance: Landlords and tenants should ensure they are in compliance with NRCS Conservation provisions, such as wetlands or highly erodible land requirements. Legal Issue: What if a landlord decides to install additional tile and NRCS makes a determination that the installation of tile and tenant's subsequent farming of the property violate Swampbuster? Is tenant ineligible for farm program payments?

2. Iowa Statutory Landlord Liens.

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

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

c. Filing Required to Perfect Ag Liens. Iowa Code §554.9310 provides:
(1) "A financing statement must be filed to perfect all . . . agricultural liens."
(3) "If a secured party assigns a perfected security interest or agricultural lien, a filing under this Article is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor."

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

agricultural lien on the farm products."

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

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

e. Continuation of Perfection of Ag Lien Upon Sale and Attachment to Proceeds. Iowa Code §554.9315: "Except as otherwise provided in this Article and in section 554.2403, subsection 2:
a. a security interest or agricultural lien continues in collateral notwithstanding sale, lease, license, exchange, or other disposition thereof unless the secured party authorized the disposition free of the security interest or agricultural lien; and
b. a security interest attaches to any identifiable proceeds of collateral."

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

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

f. Federal Food Security Act and Written Notice – Not Applicable to Ag Liens. Iowa Code §554.9320, Buyer of Goods, provides: "Buyer in ordinary course of business. Except as otherwise provided in subsection 5, a buyer in ordinary course of business, other than a person buying farm products from a person engaged in farming operations, takes free of a security interest created by the buyer's seller, even if the security interest is perfected and the buyer knows of its existence."
7 U.S.C. §1631 provides that a buyer who in the ordinary course of business who buys a farm product from a seller engaged in farming operations takes free of a security interest created by the seller, even though the security interest is perfected; and the buyer knows of the existence of such interest unless, in states such as Iowa, the seller has provided direct written notice of the security interest to the buyer.
Iowa Code §554.9102(4) provides: "For purposes of the Federal Food Security Act, 7 U.S.C. § 1631, written notice shall be considered to be received by the person to whom it was delivered if the notice is delivered in hand to the person, or mailed by certified or registered mail with the proper postage and properly addressed to the person to whom it was sent. The refusal of a person to whom a notice is so mailed to accept delivery of the notice shall be considered receipt."

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

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

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

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

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

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

(1) A landlord has a lien for the rent on crops grown on the premises, and on any other

personal property of the tenant which has been used or kept on the leased premises which is not exempt from execution. Iowa Code §570.1(1).

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

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

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

(5) The lien may be enforced as follows:

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

Note:

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

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

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

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

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

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

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

j. Enforcement.
   1. Provisions of each lien statute and Iowa Code section 554.9601 - 9624 (Art. 9, part 6)
   2. Practical issues with enforcement:
      a. Proper & timely perfection of the lien by filing UCC-1
      b. Default - negotiation with debtor (& other secured creditors)
      c. Notification to buyer of farm product subject to ag lien
         i. 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