

Farmers' Brief Guide to Lending Law

October 2026

Farmers' Legal Action Group, Inc.



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I. Introduction: Credit and Farming

This Farmers' Brief Guide to Lending Law provides an extremely brief outline of lending law—what lawyers call debtor-creditor law—for farmers.³

Credit is the lifeblood of farming. Serious price, production, and weather difficulties almost always become credit problems. The stark and ongoing reality is that on a daily basis mortgaged farms are lost or nearly lost to foreclosure, farm property pledged as collateral is repossessed, judgment liens are entered and enforced, and the livelihoods of financially distressed farmers are threatened.

Farmer 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. Collateral rules, for example, are complicated and can be extremely important for the fate of a farm. Further, for farmers of modest means, lawyers are scarce and expensive. Those assisting distressed farmers, in sum, need a working knowledge of lending law.

II. Farmers' Guide to Lending Law

This Guide is a short version of a forthcoming publication, Farmers' Guide to Lending Law, from Farmers' Legal Action Group, Inc. (FLAG). A Farmers' Guide to Minnesota Lending Law, also from FLAG, is in its fourth edition.⁴

III. State Law Varies

The law governing debtor-creditor issues varies from state to state. While the general rules on many lending law topics are quite similar among the states, the specific details of these rules are often quite different. It is possible, however, to say useful things about lending law without discussing the details of the law of every state. That is the goal of this Guide.

IV. Definitions and Types of Property

A few definitions are essential to lending law. These are described immediately below. Additional important terms are defined in the longer, forthcoming Farmers' Guide to Lending Law.

A. Debtor and Creditor

The debtor is the person who owes the debt. In this discussion we assume the debtor is a farmer. A creditor is the person who will be paid as a result of the debt. It is usually the case that a debtor-creditor relationship is the result of a loan, but not always.

³ A version of this Guide was a part of the Distressed Borrower Assistance Network Gathering materials at Farm Aid in Virginia Beach, Virginia, on September 24, 2026.

⁴ Farmers' Guide to Minnesota Lending Law can be found at:
<http://www.flaginc.org/publication/farmers-guide-to-minnesota-lending-law-4th-edition/>.

B. Contracts

Legally binding contracts are central to lending law. Documents mentioned in this Guide – loan agreements, mortgages, contracts for deed – are all contracts that give parties to the contract the right to go to court to enforce the agreement.

C. Personal Property and Real Property

Real property, sometimes called real estate, is land and things permanently attached to land—barns and other buildings, for example. Personal property is almost everything else on a farm. Livestock, equipment, harvested crops, animal feed, and seeds to plant are all personal property. Sometimes it can be hard to separate the two, but in most cases the difference is clear. There are other types of property, for example “intellectual property”—things like trademarks, patents, and copyrights—which are not discussed here.

D. Collateral—and its Importance

Collateral is the property a creditor may take from the debtor if the debtor does not pay the debt or otherwise breaks the loan agreement. Sometimes people call collateral security. Thus, “the corn crop is security for my fertilizer bill” means that the crop is the collateral for the farmer’s fertilizer loan.

One of the most important points in this Guide is that it is crucial for farmers to know what property serves as collateral, and for what loan. It is easy to make mistakes on this point. The exact collateral can seem hidden in a loan agreement, for example. Once a piece of property serves as collateral, it will be hard to secure new credit using the same property as collateral. This is because a creditor will want to know that if a farmer defaults on a loan, that creditor will have the right to claim the collateral as their lawful property (as opposed to another creditor also having a claim to the same collateral). So every time collateral is granted, future borrowing options are narrowed.

Further, depending on how the loan agreement is written, “after-acquired property” can automatically become collateral once it is owned by the farmer. After-acquired property is property that a farmer may acquire in the future which automatically becomes additional collateral for the creditor. For example, if a farmer’s agreement gives the creditor an interest in all farm equipment that the farmer currently owns “or will acquire” in the future, that means a tractor the farmer buys the next year will also serve as collateral for the debt secured by that agreement.

In addition, mistakes about what serves as collateral for what loan can suddenly and surprisingly threaten the farmer with loss of property and significant expense with very little notice or time to react.

E. Default on a Loan

A default occurs if there is a loan agreement and one party breaks the agreement. We most often think of a default to be failure to pay on the debt. There are actually many ways for a default to occur. For example, things like a farmer selling the collateral for a

loan or not maintaining insurance on a piece of collateral, such as a tractor, could be considered a default in some agreements. There is no standard legal definition of what counts as a default. It is usually defined in the loan agreement and can be surprisingly complicated. It is therefore especially important that farmers are clear on exactly what counts as a default in their agreements.

F. Three Main Kinds of Farm Debt and Credit

Almost all farm debt and credit falls into one of three types. The difference in the types of debt and credit can affect what happens if a farmer gets behind on the payments, including what happens to any collateral for the loan. The types of farm debt are: (1) real estate debt; (2) debt secured by private property; and (3) unsecured debt. The sections below describe these forms of debt and discuss what lawyers call “creditor remedies”—what the lender can do if the farmer does not pay the debt or otherwise breaks a loan agreement.

In this Guide we use farm debt and farm credit interchangeably.

G. Mediation for Farmers and Lenders

USDA provides funds for states to run mediation programs. In a mediation two parties—in our case, a farmer and a lender—sit down with a trained independent mediator to talk about the issues between the farmer and the lender. The mediator helps guide the discussion but does not take sides or rule one way or the other.

It is easy to assume that little progress could be made in something like mediation. This is actually not true. We know of many cases in which farmers and lenders were able to discuss problems with loans and reach an agreement that worked for the lender and kept the farmer in business.

If your state does not have a mediation program, it should. To repeat, USDA funding for state mediation programs is available for this purpose.

V. Real Estate Debt

Real estate debt is often used by farmers to buy or improve land. In general, this takes one of two forms: (1) a mortgage, or (2) a contract for deed—sometimes known as an installment sale.

In a mortgage, real estate is the collateral for a loan. The farmer, for example, buys land using a loan from a bank or other lending institution to pay the seller in full, and the land becomes the collateral for the loan. There may be two documents: a mortgage and a loan agreement. The farmer pays the lender over time, and the payments include both principal and interest.

In a contract or deed, the farmer also buys land, although other property can generally be included as well. Sometimes a contract for deed is called an installment sale. In a contract for deed, the farmer buys land and agrees to pay the seller directly over time for the purchase. The contract sets the terms for the agreement. Unlike with a mortgage, with a contract for deed there is no bank or lending institution involved. In addition, while the farmer receives immediate possession of the land, the title to the property does not transfer to the farmer—as the buyer—

until all of the payments have been made to the seller.

A. Mortgages and Foreclosures

In a mortgage, the borrower is the mortgagor, and the lender is the mortgagee. The mortgagee can be an individual person, a private bank, the government, a Farm Credit System lender, or another financial institution.

1. Terms

The agreement signed by the farmer sets the terms of the loan. Sometimes this means signing both a mortgage and a loan agreement, and sometimes they are combined. Terms include, for example, the amount of the loan, the interest, the length of the loan, what counts as a default, and the rights of both parties if there is a default.

2. If There is a Default

We generally think of default on a mortgage as missing payments. There can be other types of default. Mortgages, for example, often require the borrower to pay real estate taxes on the property or keep some form of insurance. If the farmer does not, that can be a default.

State law sometimes varies significantly in how creditor remedies work when a farmer is in default on a mortgage. In most cases the lender can “accelerate” the loan before a foreclosure. Acceleration makes the full amount of the debt due right away. There will be state laws about required notice to the farmer, and there may be a certain amount of time for the farmer to “cure,” or fix, the default.

In all cases, farmers have the right to notice of a foreclosure and to a set process for the foreclosure.

3. Foreclosure and After

State laws often have two ways that a lender can foreclose on property: (1) foreclosure “by action”; and (2) foreclosure “by advertisement.” A foreclosure by action is technically a lawsuit in which the creditor goes to court to get permission to foreclose on the property after there has been a default. By contrast, a foreclosure by advertisement does not require the lender to file a lawsuit or seek court approval before foreclosure. If both are available, the foreclosure by advertisement is likely easier and less expensive for the lender since it does not require the lender to go to court.

The foreclosure, whether by action or advertisement, will likely be in the form of an auction.

In many states the farmer has a “redemption period.” During this time the farmer may be able to pay all that is owed and keep the land. In many states the farmer can occupy the land until a redemption period ends.

In some states, if the foreclosure does not fully pay off the lender, the lender may seek a “deficiency” judgment from the court to force the farmer to pay the remainder of the money. To use a simple example, suppose the amount owed is 100,000 dollars. The foreclosure sale brings 80,000 dollars to the creditor. The creditor can still seek a deficiency judgment by taking the farmer to court to get the additional twenty thousand dollars. If the farmer is negotiating with a lender, it may make sense to discuss the lender’s right to a deficiency judgment.

4. Deed In Lieu of Foreclosure

Sometimes the creditor will ask the farmer to give up the property before a foreclosure. This prevents the need for a formal foreclosure process. This is called a deed in lieu of foreclosure. This option may make sense for the farmer but that will depend on the details of the agreement and the situation for the farmer.

5. Expenses Beyond the Original Loan—and Strategy if Foreclosure Coming

Almost every mortgage will allow the lender to add to the debt any costs the lender has if the farmer defaults. This could include legal expenses and costs of collecting the debt. Such expenses add up quickly. In a situation where a foreclosure cannot be avoided it may make sense to make an agreement for the farmer to sell the property—avoiding the foreclosure—and pay all or part of the debt. This can avoid some of the expenses, and very possibly get a better price for the collateral. How such a sale and payment might work can be negotiated with the lender.

B. Contract for Deed—or Installment Sale

In a typical contract for deed—also sometimes called an instalment sale—a buyer purchases land directly from a seller with a binding contract. In a contract for deed, the buyer is called the vendee and the seller is called the vendor.

1. How it Works—Buyer and Seller, but No Bank

The seller in a contract for deed promises to transfer title to the land after the buyer makes a certain number of payments over a set time period. While the payments are being made, the buyer does not own the land; the buyer does, however, have a legal interest in the land. This means that the buyer can occupy and generate income from the land—for example, by farming.

2. Contract for Deed Cancellation—and Great Risk for Farmer

If a buyer defaults on a contract for deed, the seller will usually have the right to cancel the contract and keep the land and any payments previously made. To repeat, in the case of a cancellation of a contract for deed, the law may provide for the farmer to lose both the possession of the real estate and all of the payments made up to the point of cancellation. This means that it is crucial for a farmer that is not able to make payments on a contract for deed to seek assistance and look at other options.

For example, the farmer may be able to borrow money to pay off the seller and get title to the land.

3. When All Payments Made

Once all payments are made under a contract for deed, the seller should give the buyer a deed stating that ownership of the real estate passes from the seller (vendor) to the buyer (vendee).

C. Additional Differences Between Mortgages and Contracts for Deed

In addition to the points raised above, mortgages and contracts for deed vary in some significant ways.

1. Federal Income Tax Rules May Benefit Sellers

Mortgages and contracts for deed can have different income tax consequences for sellers. Although the effect on any single person's taxes can vary greatly, for many sellers there is a tax advantage to using a contract for deed because the income from the sale is spread out over time rather than coming in one lump sum.

2. Contract for Deed Possibly Easier to Arrange for Buyers

A contract for deed may be easier for the buyer to arrange financially than a mortgage. Interest rates on a contract for deed are often less than that for a mortgage, and the down payment for a contract for deed is usually lower than the down payment on a mortgage. Because a lending institution is not involved, the seller may be more flexible in the terms and conditions for a contract for deed than a lender would be for a mortgage.

VI. Debt Secured by Personal Property

Farm operating credit provided by sellers and others is a central feature of farming. Farmers buying seeds, fertilizer, equipment, livestock, fuel, and renting land, are often providing personal property as collateral, also called "security." In many cases, the collateral and use of the loan are directly connected. For example, a loan to buy farm equipment has the equipment as collateral, and a loan for seeds will have the crop as collateral. For many loans, however, the collateral may go far beyond anything directly connected to the purpose of the loan.

A. Uniform Commercial Code (UCC)

When security for a loan is personal property, the agreement is usually governed by the state's version of what is called the Uniform Commercial Code (UCC). The UCC is an effort to make laws similar from state to state. The UCC system includes both loan agreements between the farmer and a lender and the filing of financial statements that make the agreement public.

B. Purpose of UCC Security Agreements and Statutory Liens

The UCC only relates to agreements for the sale of personal property. Security agreements under the UCC grant the lender an interest in the farmer's personal-property collateral. These agreements do two important things.

First, the UCC rules allow the lender to take the farmer's property if the farmer is in default. Loan agreements identify the collateral and control how the farmer can use the collateral.

Second, UCC rules also set the "priority" for the lenders who can take the farmer's property. It will be common for a farmer's property—for example, a growing crop—to serve as collateral for more than one creditor. UCC laws set which creditor gets to use the collateral for payment on the debt. For a lender, it can make a great deal of difference if the lender is first in line with rights to a growing crop, versus second or third in line.

State law sets these priority rules for creditors. They often include what are known as "statutory liens." Some of these liens apply only to agriculture. For example, statutory liens sometimes put the landlord first in line to the growing crop—a "priority"—over other lenders that might seem to have a superior claim. Priority rules can be surprisingly complicated.

C. Use and Selling of Collateral

One of the most important things about personal property and collateral is that almost every loan agreement will have strict rules about the use and sale of collateral. At a very minimum, the proceeds from the sale of any collateral must go to the creditor. The official name for selling collateral in ways not allowed in the security agreement is "conversion." Conversion can be a criminal offense in addition to creating a default on a security agreement.

D. Repossession of Collateral, Breaching the Peace, and Commercially Reasonable Sales

If the farmer defaults in some way—most often by getting behind on loan payments—the lender can have the right to take the collateral. In many cases, the security agreement will allow for what is called "self-help repossession." This essentially means that someone shows up and takes the collateral from the farmer.

Almost every state has laws that do not allow creditors to "breach the peace" when repossessing collateral. The details of these laws can be confusing and vary from state to state. A good general rule is that property behind a locked door is less likely to be repossessed legally than property parked on a public street.

Rules also govern what the creditor must do with collateral that is repossessed. Since the collateral is often sold there are rules—sometimes very weak—that require the sale be "commercially reasonable." Broadly speaking, this means the sale must be done in good faith and using commonly accepted practices.

VII. Unsecured Credit

Farmers often do business with people or businesses that advance credit, goods, or services without taking any security interest or collateral in the farmer's property. These are called unsecured creditors. Unsecured creditors cannot simply seize the debtor's property in case of default, but they may use other means—for example, judgments and garnishment—to take money and property from defaulting debtors.

A. Creditor Remedies for Unsecured Credit: Money Judgments

Creditors can go to court to try to collect an unsecured debt. For the vast majority of cases this will take place in a state court. Each state has its own rules for this general situation, but they are largely similar and tend to track federal court rules.

The main way creditors use court to collect on a debt is to seek a “money judgment” from the court. A money judgment says that the creditor has a right to collect on the debt. In general, the creditor will file a “complaint” with the court, which is a written document that begins a lawsuit and summarizes why the creditor, in this example, believes they are owed money from the farmer. The farmer should be served notice of the lawsuit. This will normally mean the farmer will receive a “summons and complaint,” likely from a process server.

If the farmer does not respond to the lawsuit the creditor will receive the money judgment from the court. If the farmer does not want this to happen—or believes the creditor is not owed the money—the farmer must respond to the lawsuit. This could result in a trial. A trial might include discussion of whether the debt is actually owed, the amount that is owed, whether service of the summons and complaint was handled properly, or other issues. If the creditor wins, the result is a money judgment.

B. Enforcement of the Judgment

If the creditor wins the lawsuit, the creditor can “enforce” the judgment. Enforcement most commonly takes place in three ways: (1) “writ of execution”; (2) garnishment; and (3) judgment liens.

1. Writ of Execution

A writ of execution is the most common way to try to collect on a money judgment. A writ of execution gives the government, usually the sheriff, the right to take the farmer's property in order to pay the judgment. Certain kinds of property are “exempt” from this process. That means the sheriff cannot take the property as part of the writ of execution. At least some part of a homestead, certain household goods, tools of a trade, and a motor vehicle are common exemptions.

2. Garnishment

A garnishment gives a creditor the right to take the farmer's money that is in the hands of a third party. In a garnishment, a court directs a third party to pay money, which is otherwise owed to the farmer, to the creditor instead. This can mean paying a creditor part of a farmer's paycheck, taking money from a farmer's bank account

and giving it to the creditor, and so forth. Rules limit how much of a paycheck may be garnished.

3. Judgment Lien on Real Estate

Creditors can enforce a judgment by seeking a judgment lien. This is a lien on the farmer's real estate. The effect is similar to the farmer granting a security interest in the property to the creditor. If the farmer sells the property, the judgment lien will mean the creditor has the right to take part of the proceeds from the sale.

VIII. Leases—for Land and Personal Property

About half of all farmland is rented in the United States. In addition, a great deal of equipment, and even animals, are leased by farmers. This Guide does not address the law of leases. It is important to note, however, that a lease often means a debt is involved. The laws governing these leases, especially the leasing of land, are often very longstanding. Rules vary greatly from state to state, and misunderstandings about leasing are common. The forthcoming, and much longer FLAG publication, *Farmers' Guide to Lending Law*, will discuss these matters in more detail.

IX. Farm Service Agency and the Farm Credit System

If the lender for a loan is USDA's Farm Service Agency (FSA), debtor-creditor rules can be different and generally more favorable to the farmer. These rules are applied across the country. If the lender is guaranteed by FSA, the rules are somewhat different. Similarly, if the lender is a Farm Credit System institution, rules can be somewhat different.

X. Bankruptcy

In some cases, it makes sense for farmers in financial difficulty to consider filing a bankruptcy petition. As much as any other topic discussed in this Guide, bankruptcy requires the advice of an expert.

A. The Purpose of Bankruptcy

Everyone agrees that whenever it is possible, debtors should repay money that is owed. It is also true, however, that when someone is buried in debt and realistically cannot pay it all back, it is important to have a system that erases part of the debt, reorganizes the remaining debt, and gives people caught in debt a chance to free themselves and continue productive lives. One of the primary purposes of bankruptcy, as the Supreme Court of the United States explained in 1934, in a case called *Local Loan Company vs. Hunt*, is to "relieve the honest debtor from the weight of oppressive indebtedness" and give debtors a "new opportunity in life . . . unhampered by the pressure and discouragement of pre-existing debt." The right to bankruptcy is guaranteed in the law and in fact is provided for by Article I of the United States Constitution.

B. Possible Benefits of Bankruptcy

Bankruptcies can do two important things for farmers in financial trouble.

First, through an “automatic stay” a bankruptcy can temporarily stop a foreclosure or other creditor action.

Second, depending on the circumstances of the farmer a bankruptcy can result in a reduction in the debt the farmer must pay. In general, the best farmer candidates for debt reduction in bankruptcy will have significant unsecured debt or will have significant undersecured debt. Undersecured debt, to use a simple example, occurs when the debt is 100,000 dollars and the collateral for the debt is worth only 60,000 dollars.

C. Planning for Bankruptcy

For bankruptcy to work effectively, it is best for farmers to think ahead and have a plan in place. Deciding whether to use bankruptcy and, if so, which type of bankruptcy to use can be very complicated. In addition, for bankruptcy to work well, it is important for farmers to plan business decisions well before filing bankruptcy, if possible.

Many strategies for managing assets and debts before filing for bankruptcy are beneficial and perfectly legal. Some actions a farmer might take before filing for bankruptcy, however, are illegal. Unfortunately, recognizing the difference between legal and illegal pre-bankruptcy planning strategies can be tricky. It is extremely important, therefore, for the farmer to get qualified expert advice well before filing for bankruptcy.

In some cases, a farmer may have no choice but to file for bankruptcy without much planning. Filing for bankruptcy may be needed to at least temporarily stop a repossession or foreclosure. In such a case, it is possible to file a bankruptcy petition very quickly.

D. Two General Types of Bankruptcy: Liquidation and Reorganization

Two general types of bankruptcy are available to farmers: liquidation bankruptcy and reorganization bankruptcy. The bankruptcy code provides for several types of bankruptcy—commonly known as chapters. Chapter 7 bankruptcies, known as liquidation bankruptcies, are sometimes used by farmers. Often this form of bankruptcy will call for the farming operation to be shut down.

A Chapter 12 reorganization bankruptcy, which is specifically for farmers, allows a farmer to reorganize and keep farming if the farmer can propose a plan to: (1) pay secured creditors, over time, the value of their collateral plus interest; and (2) pay unsecured creditors, including secured creditors to the extent that they are undersecured, as much as they would receive if the farmer filed a Chapter 7 liquidation bankruptcy. Other types of reorganization bankruptcy may be possible for farmers.

XI. Income Tax Considerations for Debt Forgiveness

The tax implications of many debtor-creditor problems faced by farmers can be significant and complicated. Whenever a debt is reduced or canceled, there is a potential for tax liability. If a farmer works out an agreement with a lender to reduce his or her debt, this will often result in an income tax obligation for the farmer.

Despite the general rule, there are several circumstances in which the cancellation of debt does

not create taxable income. Using any of the exceptions can be complicated. Farmers should consult a tax expert regarding specific circumstances.

XII. Discrimination is Illegal

It is sometimes assumed that almost all farmers are white men. That has never been true, and certainly is not now. Discrimination in agriculture, especially in credit, has been common for many decades. Under federal laws, specifically the Equal Credit Opportunity Act (ECOA), it is not legal to treat people differently in a credit transaction on the basis of sex, race, religion, national origin, marital status, or age.

XIII. Three Final Thoughts

Below are a few final thoughts and suggestions for any farmer who is also in a debtor-creditor relationship.

A. Understand Collateral

Perhaps the most underappreciated and avoidable problem for farmers in lending law is the extent to which farmers are not aware of the collateral that is a part of loan agreements and other documents they have signed.

B. Do Not Ignore Bad News

It is tempting not to open mail and not to look at emails. This is always a mistake. However bad things are with a creditor, ignoring the situation is always the worst answer.

C. Help is Available

A farm advocate or a farm advisor can be helpful. A lawyer may be needed. Mental health resources are available.