

Farm Management

Know your forward contract rights

THE dry weather will no doubt decrease yields in much of Ohio and across the Midwest. The lower yields could cause some producers to be unable to deliver on forward grain contracts. In such a situation, it is important for producers to understand their obligations and rights under the contract.

A grain contract is a legally binding obligation for both the buyer and producer.



Country Counsel

By ROBERT MOORE

In most situations, neither party can back out of the agreement without the permis-

sion of the other party. Some farmers may feel they cannot be bound by the grain contract since their lack of production was beyond their control. There is a legal concept known as "commercial impracticality" that will sometimes allow a party out of a contract if they are not able to perform the contract due to circumstances beyond their control. However, commercial impracticality rarely applies to non-

performance of grain contracts due to poor weather or growing conditions. The only exceptions allowed have been if the grain contract required that specific grain to be grown on a specific farm or parcel.

Read your contract

When facing a shortage of grain for delivery, the first thing the producer should do is carefully read the contract to fully understand the quantity of bushels to be delivered, the time of delivery and the location of delivery. Some contracts will expressly state the producer's obligations if some or all of the grain is not delivered. If the contract is silent on non-delivery, either Ohio law or National Grain and Feed Association rules will apply.



When non-delivery of grain becomes likely, the producer should contact the grain buyer to discuss resolving the shortage issue. The elevator may work allow for later delivery, buy bushels back, minimize penalties or some other solution. The sooner the buyer knows of the non-delivery, the more options there are available and the less severe the damages may be. Other solutions may be for the producer to buy futures or options to help offset the non-delivered grain.

The worst course of action is to do nothing and not inform the buyer that the grain will not be delivered. In this scenario, the elevator will almost assuredly require the producer to pay for all damages for non-delivery, including the cost to cover, which is the difference between the contract price and market price. As in most situations, it is typically less costly to be proactive and address the problem up front rather than to ignore the problem or deal with it after damage has been done.

It is critical that all notices to the elevator and any subsequent agreements be in writing. If a producer is not going to deliver the grain, notice should be sent to the buyer by certified mail. Under National Grain and Feed Association rules, only notices in writing are considered binding; verbal notices cannot be enforced. Also, any agreements made between the buyer and producer should be in writing and signed to avoid any confusion and to ensure the agreement is binding.

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LFP0812

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