

Hasselberg Grebe Snodgrass Urban & Wentworth

Attorneys and Counselors

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LACON OFFICE OPEN TO SERVE

Our firm is pleased to announce that we have opened a satellite office in Lacon, Illinois. Located at 310 Fifth Street (Route 17) in downtown Lacon, we are committed to providing exceptional legal services to the residents of Marshall County and the surrounding counties. The attorneys at our firm are happy to meet with clients for appointments and consultations at our new Lacon office or at our downtown Peoria office. Our law firm is made up of 12 attorneys who help clients with a wide range of legal matters, including estate planning, agricultural law, business and employment law, marital law, real estate, tax issues, personal injury, and many others. Contact our office at (309) 637-1400 to set up an appointment today.



THE IMPORTANCE OF A GOOD GRAIN CONTRACT



Grain prices are still at a historically high level . . . for now. However, with the recent success of producers throughout the State of Illinois, it is natural that other participants in the agriculture industry are also seeking to profit from current market conditions. Some cash rents are going up as well as input costs. At some point, though, grain prices may come back down, and financial strain and hardship for many farmers may follow. Examples of past difficult crises for grain elevators and producers include the early 1980's, the HTA crisis of the 1990's, and the run-up in commodity prices in 2008.

As we always remind our clients, having signed grain contracts is of critical importance to keep an honest person honest. A fully executed grain contract should set forth the mutual understanding of the parties and the key basic terms of the agreement, including, bushels to be delivered, delivery date(s), and pricing terms (cash, basis, price later, hedge to arrive, etc.), as well as other contractual provisions to limit counterparty risk such as remedies on default, arbitration, and adequate assurance of delivery.

Good grain contracts can assist in risk management and reduce the likelihood of a customer failing to perform. They can provide certain contractual protections in the unfortunate event grain either is not, or cannot be, delivered in accordance with the agreement. Spelling out the parties' obligations to perform is an essential part of the contract. For example, a producer may agree to provide reasonable assurances upon request that the agreed upon delivery will be made. Other contractual terms may reserve certain

rights of an elevator in the event of a producer's default, which are generally less expensive and time consuming than litigation. Once a contract is in default, the non-defaulting party generally has various remedies at law and equity it may pursue. As an alternative to litigation, grain contracts may specifically provide that any dispute may be resolved through National Grain and Feed Association (NGFA) arbitration proceedings. Do not forget about attorneys' fees and collection provisions in your contracts.

From an elevator's perspective, the clearer and more comprehensive the terms of a grain contract are, the greater the likelihood of successful enforcement. While nothing is ever guaranteed, careful and thorough contract drafting is a good place to start to facilitate performance or otherwise remedy a failure. Now may be a good time to take another look at what your grain contracts actually say, and our firm is qualified and ready to assist in this process. Reach out to us today by phone or e-mail if you are in need of counsel from our experienced legal team, including James R. Grebe, David L. Wentworth II, David B. Wiest, and Kyle M. Tompkins.

STRUCTURING A GRAIN ELEVATOR TRANSACTION

Grain elevator sales, acquisitions, and mergers do not occur every day, but when they do, there are multiple facets of the transaction that must be explored. From the due diligence process to reaching the closing table, grain elevators are unique in many respects. However, as with any other commercial transaction, it needs to be determined how the deal is going to get done.

Business transactions can be structured in a variety of ways. An asset purchase involves a buyer buying certain assets from a seller. In this type of deal, the buyer is limited to only assuming the risk of liabilities accompanying the assets being purchased rather than all of the seller's liabilities. The transfer of assets needs to be memorialized through assignments, bills of sale, deeds, or other instruments reflecting a conveyance. With grain elevators, assets typically subject to an asset purchase transaction include grain inventory and grain contracts, real estate, vehicles and rolling stock, grain handling machinery, equipment, and supplies. There will be certain income and property tax implications resulting from this type of transaction, which may make an agreed upon allocation of the purchase price material to the deal.

Alternatively, a buyer may purchase a seller's entire interest in its grain business through a stock or other interest purchase. Unlike an asset purchase, a stock purchase does not require a transfer and re-titling of specific assets but rather it is the ownership of business itself that is conveyed. Stock purchases may carry some beneficial tax implications for a buyer. However, the buyer may also assume all of the seller's liabilities so the due diligence and disclosure process is critical. In some cases, stock purchases may further be structured as a merger or consolidation, which have their own unique attributes.

While the above-described structures are examples of how to handle a grain elevator transaction, the list is not complete. In addition to legal aspects, structuring a deal also requires the input of other advisors, such as accountants, appraisers, surveyors, engineers, title companies, and inspectors. Regardless of how it is structured, reaching an agreement is only the beginning. Closing on the deal involves due diligence that may not only include surveys and inspections but also dealing with the Illinois Department of Agriculture in relation to grain inventory and grain contracts involved in the transaction.

Our dedicated team of attorneys, including James R. Grebe, William P. Streeter, and Kyle M. Tompkins, is experienced in handling grain elevator transactions from beginning to end, and we are ready to serve your needs.



PROPERTY TAX APPEAL BASICS

Taxes are a necessary evil, particularly property taxes. They fund our public services. They fund our schools. But how much is too much? Illinois is currently ranked second for highest property taxes in the nation. And, in recent years, many elevators throughout the State have begun to experience a sudden increase in their tax bills for one reason or another. As a statutory mandate, counties are required to assess all real property at 33 1/3% of fair cash value. However, the manner in which the fair cash value is determined for assessment purposes varies from county to county.

If you have an issue with the assessed value of your elevator, the first step to reach a resolution is typically to discuss your concerns with your local township assessor or the Supervisor of Assessments. If that fails, generally from late-summer and into fall, county officials publish and issue Notices of Assessment to property owners whose assessed value has changed from the prior year. Notices are typically issued every four (4) years based upon quadrennial assessment periods unless there has been new construction or perhaps a sale occurred in a non-general assessment year.

If you have an issue with your property taxes (other than the tax rate), this is the time period when you should pay attention. Whether or not a Notice of Assessment was actually received by the taxpayer, all taxpayers have a 30-day window from the publication date within which to file an assessment complaint with the local county board of review. Following a hearing at the local level, if the taxpayer is not satisfied, there are two avenues to seek relief: (1) file an appeal with the State of Illinois Property Tax Appeal Board; or (2) file a tax objection complaint within your local circuit court after the taxes for the relevant year have been paid. Again, there are certain time restrictions with regard to filing such appeals once a notice of final assessment is received. It is crucial to adhere to the local property tax challenge procedures as these types of challenges are administrative remedies that must be exhausted before proceeding to a higher level of review in the court system. In short, the tax appeal system is

somewhat complex, and there are certain deadlines that must be met.

Tax appeals can be based upon several grounds, namely: (1) fair market value; (2) assessment uniformity; and (3) contentions of law. Accordingly, the evidence needed and strategy in pursuing an appeal vary on a case-by-case basis. Typically, a full appraisal reflecting a lower fair cash value than the assessment may be the best bet for a successful outcome. However, evidence can also be gathered in relation to how the grain elevator is assessed comparatively to other elevators in the area, or even other industrial and commercial properties. Another common issue relates to the assessment of grain handling equipment and whether such equipment constitutes real property subject to tax, which varies widely from county to county.

If you have a question about your current property taxes, we can provide counsel as to whether a challenge is worth pursuing, including the substantive issues at hand. Counties vary in their assessment procedures so each case is very fact dependent and should be evaluated with care. Our attorneys, including Kyle M. Tompkins, are well-versed in the administrative process of tax appeals throughout the State of Illinois. We welcome the opportunity to guide your business through this process. And we are always here to help.



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OUR FIRM IS A MEMBER OF THE GRAIN AND FEED ASSOCIATION OF ILLINOIS

PRACTICING LAW WITH INTEGRITY AND
PROVIDING QUALITY LEGAL WORK TO OUR CLIENTS

- Grain Contracts, Agronomy Contracts, Master Agreements
- Mergers, Consolidations, Sales, Acquisitions and Joint Ventures
- Arbitrations before the National Grain & Feed Association
- Illinois Grain Code and Department of Agriculture Regulations
- Illinois EPA Matters
- Farm and Agricultural Business Planning
- Rail Shipment Disputes
- Employer/Employee Relations, Labor And Employment Law
- Real Estate Tax Appeals
- Business Succession Planning
- Legal Risk Management
- Bankruptcy Preference Defense and Claims Against Debtors
- Corporations, Partnerships, LLCs, Cooperatives, Other Legal Entities
- Grain Industry Commercial Litigation and General Litigation
- Agricultural Law
- Representation of Industry Members in reference to the Illinois Department of Agriculture and Other Governmental Agencies
- Energy Consortium and Illinois Commerce Commission Issues
- Workers' Compensation
- Real Estate, Lease and Contract Matters
- Lien Disputes, Liens and Security Interests
- Financing, Loan Negotiation, Loan Documentation and Work-outs
- Utility Easement and Eminent Domain
- Estate Planning, Wills, Trusts and Powers of Attorney

