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ATTORNEY GENERAL'S FARM SURVIVAL PACKET

A COLLECTION OF SUMMARIES

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May 6, 1986

**FARM
SURVIVAL
PACKET
ATTORNEY GENERAL
HUBERT H. HUMPHREY III**

A COLLECTION OF SUMMARIES

Roger Culhane, M.S., Coordinator
Attorney General's Farm & Home
Preservation Hotline (Est. June 1983)

Room 124 Ford Building
117 University Avenue
St. Paul, MN 55155
1-800-652-9747

May 6, 1986

Rev. 8/21/86



STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

ST. PAUL 55155

ADDRESS REPLY TO:
102 CAPITOL BUILDING
ST. PAUL, MN 55155
TELEPHONE: (612) 296-6196

May 6, 1986

Dear Family Farmer:

Enclosed are some materials which will help explain the 1986 "Omnibus Agricultural Act" which was recently passed and signed into law by the 1986 Minnesota Legislature. The enclosed materials are for reference purposes only and should not be construed as fact. If you believe this Act can be of assistance to you, we strongly encourage you to contact an attorney and have the attorney review House File 1599. If you need a copy of H.F. 1599 with Special Amendments, phone (612) 296-2314 and request a copy be mailed or contact your local legislator.

Information on the new farm operating interest buy-down program is available from Commissioner Hatch's office at the Department of Commerce, telephone number (612) 296-4521.

Farmers seeking information on the new State debt-restructuring real estate loan program may call Rural Finance Administration at (612) 296-5943. This program will not be ready for applications until late summer or fall.

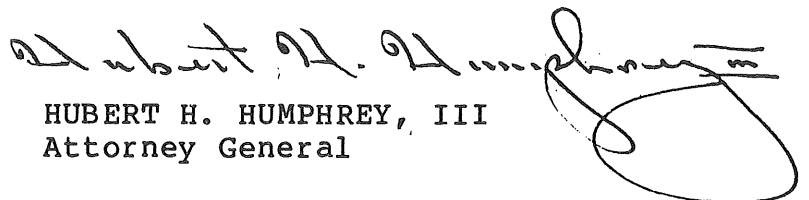
Farmers can apply for the farmer-lender mediation program at their local County Agriculture Extension Office. Additional questions may be answered by phoning the Attorney General's Farm Preservation Hotline 1-800-652-9747.

Also, farmers can get assistance by contacting a Farm Advocate, farmers trained by the State Department of Agriculture to help other farmers in their local area. Farm Advocate names may be obtained from the local Agriculture Extension Office or by phoning the Attorney General's Farm Preservation Hotline at 1-800-652-9747 or (612) 296-1484.

Questions on the Farm Home Administration's Federal Loan Programs can be answered by calling FmHA at (612) 725-5842.

Farmers looking for legal advice may call the Minnesota State Bar's Attorney Referral Service at 1-800-292-4152 for referrals and the location of their nearest free Legal Aid Office.

Best regards,


HUBERT H. HUMPHREY, III
Attorney General

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Briefly

The Minnesota Senate Week in Review

March 25, 1986

Farm package sent to governor

A \$16-million package designed to assist Minnesota's financially troubled farmers was passed by the Senate Wednesday, March 19, and sent to the governor. Senate and House conferees reached agreement Monday evening, and the final proposal closely resembles the original Senate bill.

One key provision in the package provides \$4.8 million in state funds to pay the debt service for \$50 million in general obligation bonds, which in turn would guarantee \$200 million in general revenue bonds. The provision could generate up to \$800 million, which would be used to restructure farm debt at a lower interest rate. Loans would be based on current land values rather than the higher values that were in place when the loans were made.

The bill also creates a voluntary and mandatory mediation program, which encourages lenders and farmers to work out possible debt repayment plans. Mediation is mandated upon a debtor's request when the lender has indicated an intent to enforce a security interest against agricultural property. The proceedings to enforce the debt are then suspended until 90 days after the mediation concludes or an agreement is reached. If the mediator determines that the creditor has not mediated in "good faith," the debtor can request court supervision over the mediation. The court may issue orders to insure "good faith" mediation.

Also, \$5 million is appropriated to continue the interest buy-down program, which would lower interest rates by 50 percent. The state would pay 75 percent of the interest subsidy, and the lender would cover 25 percent. Furthermore, the maximum loan amount is raised to \$100,000.

The proposal also places a one year moratorium on deficiency judgements and limits future judgements to the difference of the amount owed on the mortgage and the fair market value of the property. In addition, the homestead exemption in rural areas for

personal or deficiency judgement is increased from 80 to 160 acres.

Other appropriations provide \$1.35 million to agriculture vocational-technical institutes to reduce tuition costs for existing farm business and small business management programs. The money also could be used to provide farm business management programs and workshops. About \$1.25 million is given to the University of Minnesota to continue its agricultural extension service projects. The projects include mediation training, project support programs, farm financial management programs, and family financial and stress management education. Another \$650,000 is appropriated for a legal assistance program.

One Senate provision not accepted by House conferees would have given lenders and agricultural input suppliers who provide credit to help farmers plant their crops or raise livestock a priority lien in the proceeds of the product. However, landlords are given a priority lien in the proceeds of agricultural products that are produced on their property. Veterinarians who provide emergency services to help a farmer's animals are also given a priority lien on the proceeds of those animals.

Senate Counsel & Research

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April 3, 1986

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TO: Senator Chuck Davis
FROM: Greg Knopff, Senate Research *GK*
RE: Summary of Laws 1986, Chapter 398,
"The 1986 Omnibus Agricultural Act,"
as amended in First Special Session

Article 1. MEDIATION

LEGISLATIVE
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A procedure is established for both voluntary and mandatory mediation. Mandatory mediation is required, when a creditor takes a negative action to collect a debt over \$5,000 against agricultural property and the debtor requests mediation. The mediation period may last up to 60 days.

A creditor wishing to start a proceeding to enforce a debt against agricultural property must have filed a mediation notice with the debtor and, if required, completed mediation.

A debtor receiving a mediation notice must request mediation from the director of the extension service within 14 days. If the debtor fails to request mediation, the creditor may continue with proceedings to enforce a debt. The director of the extension service shall provide debtors who receive mediation notices with a credit analyst to prepare the relevant financial information needed for the mediation. The director must notify all known creditors and the debtor of the time and place of the initial mediation meeting and assign a mediator.

Proceedings to enforce a debt against agricultural property are suspended until 90 days after the initiation of the mediation or a mediation agreement is reached. If the creditor is an agency of the United States, the proceedings are suspended for 180 days.

The duties of the mediator are listed and the provisions and effects of a mediation agreement are stated.

Creditors and debtors must engage in mediation in good faith. "Not participating in good faith" is defined. If the mediator finds that a creditor has not participated in good faith, the debtor may require court supervised mandatory mediation. The court may issue orders to effect good

faith negotiation. The court may suspend a creditor's remedies for an additional 180 days if the creditor has been found to have negotiated "not in good faith." If a debtor has not negotiated in good faith, the creditor may proceed immediately with enforcement proceedings.

Notice to the debtor of rights under this article is required. The article applies to real and personal property of a farming operation, with greater than 60 acres or greater than \$20,000 income.

Article 2. REDEMPTION OF AGRICULTURAL HOMESTEADS

If real property is to be sold on execution, the creditor must notify the debtor of the debtor's right to have the homestead sold and redeemed separately from the remaining property. The contents of the notice are specified.

Debtors or mortgagors who have not received notification as required by this article may petition the district court to have the homestead redeemed separately. The procedure for the court to follow in determining the fair redemption cost is set forth.

If a mortgage on real property is foreclosed and the property contains a portion of the homestead, the mortgagee must notify the mortgagor of the mortgagor's right to have the homestead separately sold and redeemed. The contents of the notice are specified.

This article is effective the day following final enactment and applies to all foreclosures or executions on real property served on the debtor on or after the effective date.

Article 3. FAMILY FARMER LEGAL ASSISTANCE PROGRAM

The supreme court is required to contract with a nonprofit corporation to provide legal assistance to financially distressed family farmers. The requirements and priorities of the program are specified. The legal services provider must report to the supreme court every six months. The eligibility requirements of financially distressed family farmers are:

- (1) state resident;
- (2) has been a farmer in the last 2 years;
- (3) debt-to-asset ratio of 50% or greater;

- (4) up to \$15,000 taxable income; and
- (5) financially unable to retain legal representation.

The legal services provider must submit an annual report to the legislature.

Article 4. INTERSTATE COMPACT ON AGRICULTURAL GRAIN MARKETING

Ratification of an interstate grain compact which is effective when 5 states ratify the same provisions. The compact will conduct studies of agricultural grain marketing and make recommendations to congress and member states.

Article 5. ASSET EXEMPTION

The exempted homestead property in rural areas for AFDC payment eligibility is changed from 80 contiguous acres to all contiguous acres.

Article 6. DEBT RESTRUCTURING

Up to \$50 million in general obligation (GO) bonding is authorized to be used to guarantee revenue bonds. The GO bonds should be able to guarantee up to \$200 million in revenue bonds with the possibility of restructuring up to \$800 million in real estate debt.

Eligibility:

- (1) state resident or family farm corporation;
- (2) principal operator of a farming operation;
- (3) at least 50 percent of gross income from farming;
- (4) debt-to-asset ratio of 50 percent or greater;
- (5) total projected expenses after restructuring 95 percent of expected income;
- (6) unable to meet projected expenses;
- (7) no previous restructuring loans under this program.

The maximum state share in a loan is:

- (1) 25 percent or \$50,000, whichever is less; or

- (2) homestead loan of 50 percent or \$25,000, whichever is less.

For a specified time period, the farmer pays only the agreed upon part of the interest on the loan for the portion that covers the current market value of real estate (primary principal). The loan amount which is above the current market value (secondary principal) accrues interest at less than a market rate. After the specified period, the loan amount and interest accrued above the market rate, at the specified time, is forgiven in the following order:

- (1) deferred interest on secondary principal;
- (2) secondary principal;
- (3) deferred interest on primary principal;
- (4) primary principal as agreed to by the administration and the lender; and
- (5) accrued but not deferred interest.

The Rural Finance Administration is created to carry out the program. The administration is composed of 7 members as follows:

- the commissioners of finance, agriculture, and commerce;
- the state auditor; and
- three public members.

Article 7. PROTECTION OF CONSERVATION PRACTICES

Penalties for corporations that remove permanent conservation practices are established. Deed recording of state conservation cost-share funding is required.

Article 8. FAMILY FARM SECURITY INTEREST

The commissioner of agriculture will be required to annually pay to family farm security program contract vendors the additional income tax as a result of the repeal of the income tax exemption. The contract vendor must reduce the outstanding principal of the contract by 3 percent to receive the payment.

Article 9. VETERINARIAN LIEN

Veterinarian liens will have priority in the animals treated for necessary services.

Article 10. NATIVE AMERICAN MEMORIAL

Requires a memorial to Native Americans on the Capitol Mall.

Article 11. AGRICULTURAL DATA TASK FORCE

The agricultural data collection task force is extended for one year. Data collected by the task force will be "non-public data" until released by a majority vote of the task force.

Article 12. CROP RIGHTS ON FORECLOSED LAND

Clarification of the rights of the planting crop owner and the person with the right to harvest the crop, when a redemption period ends during a growing season.

The claimant's county is deleted as a place where actions to recover personal property wrongfully taken can be tried.

Article 13. TRANSPORTATION

The maximum weight limit on all state trunk highways is 80,000 lbs.

The vehicle registration fee is increased for vehicles between 73,280 lbs. and 80,000 lbs. Annual increase to the Highway Users Tax Distribution fund of \$2 million.

Notice and rules are required for spring posting on major market arterials.

A permit is established for trucks hauling sugar beets or potatoes to be 10 percent overweight from October 1 to November 30 each year.

The extreme northwestern part of the state is included for the allowance of 10 percent overweight in the month of December.

The annual permit fee for trailers in excess of 48 feet, when the vehicle's overall length does not exceed 65 feet, is removed.

The overall width of a permitted vehicle transporting farm equipment which does not require prior route approval is increased from 12 feet to 14 feet.

Movement of round bales of hay within 20 miles is exempted from permit requirements, when vehicles are not for hire.

Truck tractor semitrailer combinations designed to carry automobiles may carry boats and use the same routes authorized for vehicles moved with automobiles.

An annual permit is authorized for trucks carrying construction equipment and having a gross weight between 140,000 lbs. and 145,000 lbs.

Article 14. RAILROAD PROPERTY FIRST REFUSAL

A leaseholder is allowed the right of first refusal on sale of railroad property, when the railroad is either in bankruptcy or abandonment proceedings.

Article 15. LANDLORD LIEN

A landlord lien is established which takes a priority, above all other liens, in the agricultural products or proceeds which are produced on the landlord's property.

Article 16. 160 ACRE HOMESTEAD

The homestead exemption in rural areas for personal or deficiency judgments is increased from 80 acres to 160 acres.

Article 17. ALTERNATIVE DISPUTE RESOLUTION

A nonprofit regional alternative dispute resolution corporations shall be eligible to receive funding from the civil fine surcharge to train mediators and amends the Minnesota Civil Mediation Act. A debtor-creditor mediation system is established.

Article 18. WILD RICE LAND

A state wild rice lease may only be cancelled for just cause after 6 months notice. Existing leases may be converted to 20 years, at the option of the lessee. Proposed mineral exploration does not exempt land from being designated for wild rice development.

Article 19. DEFICIENCY JUDGMENTS

Deficiency and personal judgments allowed on agricultural real property will be the difference between the amount owed and the "fair market value" instead of the amount owed and the foreclosure sale proceeds.

Exemption of property acquired after judgment. Only one action allowed to enforce. Three-year limitation on execution of judgments for real property used in agricultural production.

Applies to both existing and new mortgages. Also, a one-year stay on deficiency judgments for existing agricultural mortgages.

Article 20. RIGHT OF FIRST REFUSAL

The state, the federal government, and corporations are required to allow the previous owner the right of first refusal, when leasing or selling farm land for the first time. The previous owner has 10 days to respond to a lease offer and 60 days to respond to an offer to buy.

Article 21. INVOLUNTARY FARM TRANSFER INCOME EXCLUSION

The capital gains on involuntary transfers of real agricultural property will be excluded as taxable for state income taxes and is retroactive to tax year 1983. The exclusion does not apply to any net cash proceeds distributed to the taxpayer.

Article 22. FARM ADVOCATE ETHICAL GUIDELINES

Requirement that the commissioner of agriculture include ethical guidelines as part of the contract with farm advocates.

Article 23. FARM LOAN INTEREST BUY-DOWN

A new program is established which will pay a lender 37½ percent of the contract interest based on an interest rate which the lender offers to similar borrowers. The lender must absorb 12½ percent of the contract interest and the farmer is obligated for 50 percent of the contract interest. The maximum loan amount is \$100,000.

A maximum interest rate ceiling is three percent above the federal intermediate credit bank rate to PCAs.

Allowance is made for eligibility of loans made under the 1985 program due between March 1, 1986, and April 1, 1986, and payments between March 1 and June 30.

The interest payment program on existing loans (program 1) is extended.

Article 24. TANK SAFETY

The specifications are removed for the variance on petroleum product tank motor vehicles manufactured between 1950 and 1975. The variance will be granted to vehicles instead of persons.

Article 25. PRIORITY LIEN STUDY

A joint interim legislative committee is required to study the impact of priority liens on agricultural products and restricting short sales of raw agricultural products.

Article 26. SOIL AND WATER PURIFICATION TEST

The Pollution Control Agency is required to authorize at least one, but not more than five, projects that test microbiological systems on contaminated sites. Test results must be made available to the agency.

Article 27. DITCH CONSERVATION

Restrictions are placed on tilling or other detrimental activities of road ditches. A report is required by the soil and water conservation board on drainage ditch seeding violations.

Article 28. AGRICULTURAL LAND PRESERVATION

A county conservation fee is established in counties with exclusive agricultural zones of \$3 per mortgage or deed recording or registration. One-half of the money will be retained by the county for revenue losses from conservation tax credits (established in this article). The other 1/2 is to be credited to the Minnesota Conservation Fund which is to be used to reimburse counties with tax losses in excess of the county fund.

Article 29. GENERAL FUND APPROPRIATIONS**Program**

Legal Assistance	\$ 650,000
Mediation	360,000
Interest Buy-Down	5,000,000
Farm Advocates	300,000
Data Collection Task Force	10,500
Family Farm Security payments to contract vendors	740,000
AVTIs, U of M technical colleges, and independent school districts for tuition supplement and new farm management programs	1,350,000
U of M Agricultural Extension Service (Project Support and Mediator Training)	1,250,000
Debt Service for Bonding	4,802,000
Grant to FmHA for FINPAC compatibility	72,500
U of M Agricultural Experiment Station for water quality research	250,000
U of M Agricultural Extension Service for county extension agents lost through retrenchment	115,000
AVTI sweet sorghum research	60,000
U of M Agriculture Experiment Station wild rice research	40,000
Capital Gain exclusion on involuntary transfers	<u>1,000,000</u>
TOTAL	<u>\$16,000,000</u>

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INTEREST BUY-DOWN PROGRAM

The 1986 Omnibus Agricultural Act provides for the continuation of the State Interest Buy-Down Program. The law continues the two farm lending assistance programs through which \$5 million is made available to reduce interest rates to qualifying farmers. The provisions for the interest payment program on existing loans (program #1) remain the same as last year. To provide for increased participation in the interest buy-down new loan program (program #2), the maximum loan amount was increased and the portion of interest paid by the state was increased.

Program #1: Existing Loan Program.

Program #1 involves existing farm operating loans and real estate loans. The program is available to farm borrowers whose lenders submit loans to FmHA for loan guarantees and debt restructuring.

During the first 60 days of a 120-day period, participating lenders must review all classified farm loans and determine which ones they will submit for loan guarantees and debt restructuring.

On those loans submitted to FmHA, the state will pay the interest due for the first 60 days of the 120-day period on the first \$25,000 of principal in operating loans and the interest on the first \$25,000 of farm ownership loan principal.

During the second 60 days, if the loan is approved by FmHA, the accrued interest will be tacked onto the loan balance for repayment by the farmer.

The lender and borrower must sign an agreement for this program regarding foreclosures, state interest payments, assumption of the second 60 days interest payments by the lender and an agreement for a borrower to repay the second 60 days of interest.

A farmer must agree to enroll in an approved adult farm management program offered not more than 50 miles from the farmer's residence if enrollment is a condition of receiving a farm operating loan from a participating lender.

Program #2: New Loan Program (Interest Buy-Down)

To be eligible for Program #2, a farmer must have a debt-to-asset ratio of greater than 50 percent and be deemed by the lender to have a reasonable opportunity for long-term financial viability in the farmer's current farm operation.

The state will pay 37.5 percent of the contract interest based on an interest rate which the lender offers to similar borrowers. The lender must absorb 12.5 percent of the contract interest and the farmer is obligated for 50 percent of the contract interest. The maximum loan amount is \$100,000.

An eligible farm operating loan is an original, extended or renegotiated loan or line of credit obtained by a farmer from a lender for the purposes of financing the operations of a farm. A farm operating loan includes an open line of credit. The loan must have a maturity date of June 30, 1987, or earlier.

Banks, credit unions, savings and loan associations chartered by the state or federal government, a unit of the farm credit system, the Federal Deposit Insurance Corporation and other financial institutions the Commissioner deems that meet the requirements are eligible lenders.

A participating lender must agree to pay one-half of the enrollment and tuition costs of an approved adult farm management program for an eligible borrower approved by the Commissioner for interest rate buy-down.

The cut-off date for submission of loans is December 30, 1986, but farmers are urged to inquire with their lenders and apply immediately if they qualify and desire to participate in either or both programs.

The program is being administered by the Minnesota Department of Commerce, which has five working days to review agreements after receiving them.

KNOW YOUR RIGHTS

Release Date: July 1986

MORE FARM-DEBT RELIEF: MINNESOTA'S NEW RURAL FINANCE ADMINISTRATION

Minnesota farmers, sinking under real estate debt, may now be able to save themselves by restructuring their loans under Minnesota's newly-formed, state-backed Rural Finance Administration (RFA).

Expected to become operational later this summer, the RFA will enable eligible borrowers to lower their annual debt service costs by deferring principal and a portion of interest costs until the end of the restructured loan period. The RFA will be able to purchase 25 percent (up to \$50,000) of a restructured agricultural real estate loan, or 50 percent (up to \$25,000) of a first mortgage restructured loan for the redemption of the farm homestead. The new program's targeted customers are those farmers who have a reasonable chance of financially succeeding if given the time and the relief provided by a restructured loan.

To be eligible, borrowers must:

- live in Minnesota or be a domestic family farm corporation, as defined in Minnesota Statutes section 500.24, subdivision 2;
- be the principal operator of the farm;
- have received at least 50 percent of his or her annual gross income from farming, and farming must be the principal occupation of the borrower;
- have a debt-to-asset ratio equal to or greater than 50 percent. In determining this ratio, the asset value of real estate must be determined by a qualified appraisal of the property's current market value. Such an appraisal considers comparable sales in the area and the reasonable productive value of the property based upon its past production history;
- be unable to meet projected annual expenses without restructuring the loan.

In addition, the borrower's projected annual expenses, including operating expenses, family living, and interest expenses after the restructuring, must not exceed 95 percent of the borrower's projected annual income considering prior production history and uniform projected prices for farm production. Eligible borrowers can receive a restructured agricultural loan or a homestead redemption loan, but not both.

Qualified lenders under the Act include any bank, credit union, savings and loan association chartered by the state or federal government, a unit of the Farm Credit System, the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, and any insurance company, fund, or other financial institution doing business as an agricultural lender within the state.

Only first mortgage real estate debts qualify for restructuring under this program, and either lender or borrower may propose restructuring. After the lender determines preliminary eligibility, it must conduct the necessary financial analysis and appraisals and prepare the loan restructuring agreement. The agreement must then be approved by the borrower, the lender and the RFA. The RFA will then purchase an interest in the restructured loan from the lender, effectively reducing the capital commitment of the lender for the term of the loan.

Loan obligations are restructured by dividing them into two parts —

(1) a **Primary Principal** portion, equal to the current market value of the property pledged as security for the loan. It is this portion of the loan in which the RFA will purchase a 25 or 50 percent interest;

(2) a **Secondary Principal** portion, which is that portion of the current loan which is in excess of the current market value of the real estate.

The borrower would be responsible only for making market rate interest payments on the new primary principal of the loan or an agreed-upon portion of it. All principal payments would be deferred until the end of the new loan. In addition, interest would accrue on the secondary principal at a below market rate and would also be deferred.

At the conclusion of a restructured loan, the borrower owes all primary and secondary principal, and any deferred interest which has accrued. However, if a current appraisal establishes that the market value of the real estate is less than the amount of debt owed on the restructured loan, that portion of the debt which exceeds market value must be forgiven by the lender. If the value is equal to or exceeds the total debt, the entire debt is payable to the lender. This assures that at the end of a restructured loan, a borrower cannot be indebted for more than the current market value of the real estate and will have had a period of improved cash flow. If you want more information about the RFA, call the Minnesota Attorney General's Farm and Home Preservation Hotline, 1-800-652-9747.

A consumer service from the Office of Minnesota Attorney General Hubert H. Humphrey III

NEW DEBT RESTRUCTURING PROGRAM

A Debt Restructuring Program that is geared to help 4,000 to 6,000 Minnesota farmers restructure their debt and/or keep their homesteads was signed into law by Governor Rudy Perpich as part of the 1986 Omnibus Agricultural Act.

The program uses \$50 million in General Obligation bonds to leverage \$200 million in Revenue bonds which in turn will leverage \$800 million in farm finance restructuring. The program is viewed as a positive step to help both lenders and farmers restructure farm debt.

The provisions of the legislation include:

- I. \$4.8 million is appropriated to the Commissioner of Finance
 - A. Issuance of \$50 million in General Obligation Bonds for the Security Account
 - B. Issuance of \$200 million in Revenue Bonds
*Requires an "A" rating by a national bond agency for all bonds
 - C. Ultimately Restructure \$800 million in farm debt

- II. Minnesota Rural Finance Authority
 - A. Commissioner of Finance: Chairperson
 - B. Commissioner of Agriculture
 - C. Commissioner of Commerce
 - D. State Auditor
 - E. 3 public members appointed by the Governor and approved by the Senate

- III. Restructuring Procedure
 - A. Borrower or lender proposes restructuring plan to the Administration
 - B. Administration and lender have 30 days to notify the farmer of preliminary approval or rejection
 - C. Lender appraises and drafts the loan restructuring agreement
 - D. The agreement must be approved by the lender, administration and borrower

- IV. Criteria for the Restructured Loan Program and Homestead Redemption Program
 - A. Resident of Minnesota
 - B. Principal operator of the farm
 - C. Have received at least 50 percent of his or her annual gross income from farming and must be the principal occupation of the farmer
 - D. Have debt/asset ratio equal to or greater than 50 percent. (Assets determined by current market value)
 - E. Farmer's projected annual expenses including operating, family living and interest after restructuring, must not exceed 95 percent of the borrower's projected annual income considering prior production history and projected prices for farm production

- F. Farmer must be unable to meet projected annual expenses without restructuring the loan
- G. Borrower must not have previously received restructuring assistance

V. Restructured Loan Program

- A. State shall participate in a restructured loan to the extent of one quarter of the primary principal or \$50,000, whichever is less
- B. A farmer participating in the restructured loan program cannot participate in the Homestead Redemption Program

VI. Homestead Redemption Program

- A. The state may participate in a Homestead Redemption loan to the extent of one-half the primary principal or \$25,000, whichever is less.
- B. The maximum amount of the loan is \$50,000.
- C. A farmer participating in the Homestead Redemption Program cannot participate in the Restructured Loan Program.

VII. Restructured Loan Agreement

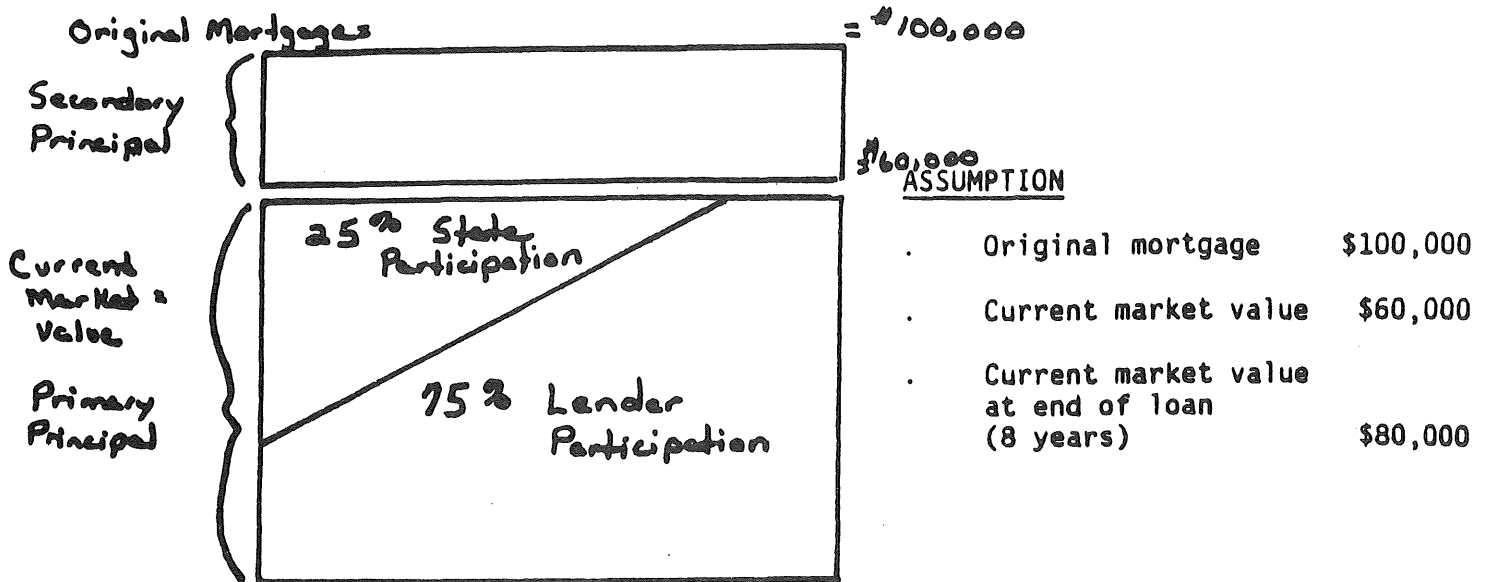
- A. All payments on the primary and secondary principal of the restructured loan, all payments of interest on the secondary principal, and an agreed portion of the interest payable to the lender on the primary principal must be deferred to the end of the term of the loan.
- B. At the conclusion of the term of the loan all the principal and interest are due. However, part of the balloon payment may be forgiven if the current market value of the land after appraisal is less than the amount of debt owed by the borrower to the lender and administration on this obligation. The portion of the obligation that exceeds the current market value of the real property must be forgiven by the lender and administration.
- C. Interest rate on the primary principal is determined by the administration.

VIII. Administration and costs of the program are borne by the lender

NOTE: The state is projecting the program to be in operation this August. Additional procedures and rules are in the process of being written.

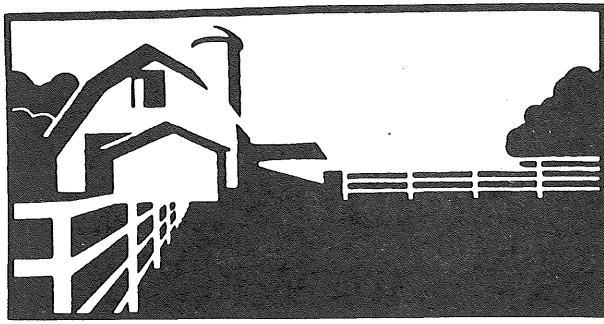
EXAMPLE: Restructured Loan Program

- * A farmer with a present \$100,000 mortgage on property now worth \$60,000.
- * The farmers and lender agree to restructure the mortgage under this program for a period of eight years.



TERMS OF THE AGREEMENT

- * The Administration/farmer & lender agree to a loan in which the Administration purchases a 25% interest in the primary principal.
- * Lender defers all principal payments for the life of loan.
- * Lender "writes-down" the interest on the primary principle to 8%.
- * Lender agrees to defer a portion of interest.
 - . The difference in interest between the 8% and market rate on the primary principal is deferred until the end of the loan.
 - . Interest is also deferred on the secondary principal until the end of the loan. This interest accumulates at a below market rate.
- * For the term of the loan--eight years in this example--the farmer makes an annual interest payment of \$4,800--his only obligation. (8% x \$60,000)
- * At the end of eight years, the farmer owes a balloon payment that consists of:
 - . All deferred interest--on both primary and secondary principal.
 - . The current market value of the property at that time--eight years in the future.
- * All debt between the \$80,000 (market value after 8 years) and \$100,000 (original mortgage) is forgiven--along with accrued interest attributable to that debt.



FARM CONSUMER INFO

From the Office of Minnesota Attorney General
Hubert H. Humphrey III

Farm Hotline: 1-800-652-9747
612-297-4111

Questions and Answers on Minnesota's New Farm Legislation: THE FARMER-LENDER MEDIATION ACT

Q. What is mediation?

A. A meeting at which a neutral third-party assists a debtor and creditors in settling their differences.

Q. When does mediation occur?

- A.** 1) Debtors and creditors may mediate voluntarily at any time. Either party can request voluntary mediation through the director of the agricultural extension service.
2) Debtors and creditors are required to mediate if a creditor desires to start actions against agricultural property such as foreclosure, cancellation of a contract for deed, repossession and execution of a judgment, among others.

Q. Are all farmers eligible for mediation?

A. The mediation act applies to all farmers, except "hobby farmers", those who own or lease less than 60 acres and have less than \$20,000 in gross income.

Q. Which creditors does the act apply to?

A. The mediation act applies to any creditor who is a holder of a mortgage on agricultural property, a vendor of a contract for deed, a person with a lien or security interest in agricultural property, or a judgment creditor with a judgment against agricultural property. It applies to FmHA, Federal Land Bank, Production Credit Associations and any other corporation, partnership or individual.

Q. What property is covered by the act?

A. Real estate and personal property used for farming, including equipment, crops, livestock, poultry and proceeds of security used to finance a farm operation.

EXCEPTION: The Act does not apply to personal property subject to a possessory (mechanic's) lien and the mandatory mediation provisions do not apply to property securing debts of \$5,000 or less.

Q. Who serves as mediators?

A. Mediators are appointed and trained by the director of the agricultural extension service. They must be experienced in farm finance, agricultural law and negotiation.

Q. How does one become a mediator?

A. Contact the agricultural extension service to apply. The service can inform you of training programs and compensation for mediating.

Q. Do mediators risk personal liability for their actions?

A. No, mediators are immune from civil liability for actions within the scope of their position as mediators.

Q. Is there any assistance available to farmers who will be participating in mediation?

A. After a mediation request is filed, the director may appoint a credit analyst to assist a farmer in preparing financial information for mediation. In addition, a farm advocate may be available to assist the farmer.

Q. How does mandatory mediation work?

A. Mandatory mediation is started whenever a creditor desires to start a proceeding to enforce a debt against agricultural property (e.g. foreclose). The process is described below.

MANDATORY MEDIATION STEP-BY-STEP PROCEDURES

1. Before starting a proceeding to enforce a debt against agricultural property, a creditor must serve a mediation notice on the debtor and the director of the agricultural extension service.
2. If the debtor desires mediation, he must, within 14 days, file a request for mediation, including a list of all of his creditors, with the director of the agricultural extension service. If the debtor does not file his request in 14 days, he waives his right to mediation.
3. Within 10 days of receiving a mediation request, the director sends the debtor and creditor a notice of the first mediation meeting and list of three possible mediators. The initial mediation meeting will take place within 20 days of the meeting notice.

4. The debtor and creditors may each strike out the name of one mediator within three days of receiving the meeting notice.
 5. Creditors receiving a mediation meeting notice must wait 90 days from the initiation of mediation (180 days if the creditor is a federal agency) before proceeding against the agricultural property of the debtor.
 6. Mediation may take place for up to 60 days.
 7. The law requires debtors and creditors to mediate in good faith. Among other things, this means that they must attend the mediation meetings, provide full information, present debt restructuring alternatives, and the creditor must release to the debtor necessary living and operating expenses during the mediation period.
 8. If either party does not mediate in good faith, the mediator may file an affidavit so stating with the director of Ag Extension. If the debtor does not mediate in good faith, the creditor may immediately proceed against agricultural property. If the creditor does not mediate in good faith, the debtor may file the mediator's affidavit with the district court to require additional court-supervised mediation for up to 60 days.
- Q. What can a debtor do if the creditor fails to file a mediation notice?**
- A. The debtor may file a mediation request with the director of Ag Extension stating that no notice has been served. The director will then initiate mediation.**

If you have further questions, please contact the local Agricultural Extension Service or the Attorney General's Farm and Home Preservation Hot Line (1-800-652-9747).

KNOW YOUR RIGHTS

Release Date: May 1986

WHAT A FARMER SHOULD BRING TO MEDIATION

Minnesota farmers got a helping hand from the 1986 legislature when it passed the Farmer-Lender Mediation Act requiring farmers and their creditors to mediate their differences before any legal action can be taken by creditors.

But farmers can further help their cases by going into that mediation well prepared. That means bringing to the meeting all of the documents the mediator will need. The following list includes most of what will probably be wanted.

- Bring a list of farm assets including automobiles, machinery, equipment, tools and the like, whether or not they are mortgaged or used as collateral on a loan. In addition, bring any appraisal or loan inventory forms on such property.

- Bring a legal description of any real property in which you have an interest — for instance your homestead. You can get this information by reviewing your mortgages.

- Bring documents showing your income for the past three years. Include any income you have received outside of farming. Check your tax forms for this information.

- If you operate as an entity other than as a family farm, or have been part of a corporation or partnership within the past six years, bring with you: (1) the corporation's or partnership's name and address, (2) the date you started doing business and, if you ceased doing business, that date as well, (3) names and addresses of the corporate officers, stockholders or partners. If there is a corporate book or partnership agreement, bring it. If you paid salaries and have state and federal identification numbers, list them as well.

- In addition, note the names and addresses of people who owe you money. List the amounts and how long they have had the credit and why. Moreover, list everyone, including relatives and friends, to whom you owe money and include any collection agencies collecting for a creditor.

- Bring copies of the following: (1) financing statements from your county recorder, (2) security agreements and mortgages from your lender, (3) contracts, (4) leases signed with creditors and financial statements provided within the past two years.

- Finally, bring copies of legal papers served on you, for example, summonses and complaints, notices of mortgage foreclosures, or notices of garnishment. If you have been divorced, bring a copy of the judgment.

Local county Agricultural Extension Service offices have computers which can be programmed to prepare financial plans for farmers. Called "Fin-Pacs," these plans are provided by the service free of charge. Farmers going into mediation would be wise to take advantage of this program.

Mediators have been trained to assist farmers and lenders in resolving farm credit problems. Farmers and lenders can locate a mediator to mediate their farm credit problems by contacting their local county agriculture extension office for a list of mediators in their area.

If farmers or lenders have questions about preparing the information for a mediator, they can contact the local county agriculture extension office. Additional information is available to farmers or lenders from the Attorney General's Farm and Home Preservation Hotline: 1-800-652-9747.

KNOW YOUR RIGHTS

Release Date: April 1986

FARM FACING FORECLOSURE? STATE LAW MAY OFFER SOME PROTECTION

Farmers, before you put up that homestead or tractor as security against your next operating loan, know that for those who've taken the proper precautions, there are state and federal laws which — under certain circumstances — can protect one's home and property against the claims of most creditors.

This protection, however, is conditioned on a number of factors spelled out by the law. Farmers who are aware of what these factors are may be able to tailor future borrowing to avoid complications later.

Generally under state law, a farm homestead is vulnerable to creditors or lenders only if the farmer has given a security interest or mortgage in the homestead — in other words, has put up the farm homestead as security for a loan. This is consistent with state law which provides that certain types of property are so important that they are exempt from the claims of creditors as long as the property is not tied up as collateral.

Among those exemptions are: (1) clothing and most household goods, furniture and appliances not exceeding \$4,500 in value, (2) a motor vehicle worth up to \$2,000 or up to \$2,000 in value over and above what is owed on it, (3) tools of the farming trade or farm machinery worth up to \$10,000, and (4) a home on one half an acre within a city limit or a farm or rural homestead of up to 160 acres outside city limits. Farmers should be aware, however, that these exemptions do not apply if the debtor has given a creditor or lender a written security interest or mortgage in the property.

For the same "survival needs" reasons, a portion of farm earnings are also protected from creditors. Under a 1985 amendment to the Minnesota garnishment law, farm earnings, including the proceeds from the sale of crops, livestock, eggs, milk and other farm produce, are, to a certain degree, off-limits to would-be garnishers. Under the law, farmers can protect up to 75 percent of such earnings or a minimum of approximately \$134 a week. However, the garnishment protection does not apply to farmers who have given a security interest in these crops or livestock or who have assigned the payment of the milk or egg check.

The catch to all of this, of course, is that many farmers seeking financing for 1986 will find it difficult not to put up their basic earnings and survival property as collateral. Due to the continuing credit crunch, many farm lenders will be seeking to shore up their secured position before extending credit for 1986 farm loans. Lenders will be requiring additional security in crops, livestock, and machinery and land to ensure that the lender is able to recover the amount owed plus costs in case the farmer defaults. Even the most reliable farm borrower may be faced with lenders demanding such additional security.

Still, many farmers who have already committed the majority of their survival property may find it possible to get this property released by existing creditors. While it probably won't be easy, farmers who have already given a security interest in otherwise exempt property, may be able to negotiate the release of the exempt property from the existing mortgage or security agreement. But the process of negotiating such a release can be complicated. Farmers wishing to do so would be wise to contact an attorney for more specific information regarding their situation.

Farmers who have committed survival property, and who are in danger of having their personal property repossessed, may be able to make use of Minnesota's exemptions in bankruptcy. Farmers should know that while bankruptcy is generally a last resort for debtors unable to work out repayment to creditors and lenders, it also allows the debtor to do more than just liquidate and discharge debts. Provisions in the bankruptcy code allow the debtor, in certain cases, to use "lien avoidance" to protect farm machinery against the claims of many secured creditors. However, such lien avoidance cannot be used to avoid a security interest in land or mortgage (even when the mortgage is on the homestead).

Different exemptions are available under the Federal Bankruptcy Code. The debtor can choose either state or federal exemptions, but not both. Depending on a farmer's particular circumstance, one set may be preferable over the other. The farmer should explore with an attorney which would be best to claim. Spouses filing bankruptcy together may be able to claim twice the amount for exemptions.

For further information about what can and cannot be protected against creditors, or for information on bankruptcy, farmers should contact a private attorney. One way to do that is to call the state-wide toll-free Attorney Referral Number: 1-800-292-4152. Attorneys listed with this service have agreed to give an initial consultation for a limited fee. You may also wish to contact the Legal Services office located in your area. Legal Services provides free legal assistance in certain cases to eligible farmers unable to afford the assistance of a private attorney. For more information about where to go for farm credit help, contact the Minnesota Attorney General's Farm Preservation Hotline at 1-800-652-9747.

A consumer service from the Office of Minnesota Attorney General Hubert H. Humphrey III

Your Rights and the Law: Questions About The Minnesota Mortgage Relief Act

The 1985 Minnesota Mortgage Relief Act was signed into law in July of this year, effective until May 1, 1987. If you may lose your farm or city homestead, learn about your rights under this Act.

1. **WHAT IS IT?** It is a Minnesota Law which continues and modifies the 1983 Mortgage Relief Act, an Act written to help persons facing foreclosure on city or farm homesteads, who missed mortgage or contract for deed payments because of unexpected economic events, medical expenses, unemployment, or under-employment.

2. **DOES IT AUTOMATICALLY DELAY ALL FORECLOSURES OR CONTRACT FOR DEED CANCELLATIONS?** No. You must apply for its protections, and the court will approve or deny your application.

3. **SHOULD EVERYONE WHO MAY LOSE A HOMESTEAD APPLY FOR PROTECTIONS OF THIS ACT?** No. Although the Act can be a valuable tool when "buying time" means the difference between saving or losing a home or farm, it is not the best approach for everyone. Before deciding whether to apply for a postponement under the Act, get competent legal and accounting advice. The Act has different provisions for mortgages than for contract for deed. Also, there are other alternatives such as bankruptcy proceedings. Your decision may depend on tax consequences. (There may be other protections, too, if your foreclosing lender is HUD or a farm credit system lender.)

4. **WHAT ABOUT LEGAL FEES?** Previously, to get help under this law, you had to pay your lender's attorneys fees. The new law limits the amount of your lender's attorneys fees that you must pay to \$150. Persons who receive public assistance or legal aid cannot be ordered to pay any of their lender's attorneys fees.

5. **DOES THE ACT APPLY TO ALL MORTGAGES AND CONTRACTS FOR DEED?** No. The act applies only to first mortgages and contracts for deed made before May 24, 1983. If they were renewed or extended after that date, the renewal period cannot be longer than one year. This Act can be used to postpone foreclosures on any first mortgages and contracts for deed, UNLESS a second mortgage was placed on the property after May 24, 1983.

6. **WHAT DOES THE ACT REQUIRE TO FORECLOSE ON A MORTGAGE?** The process includes:
a) Before the foreclosure process can begin, your mortgage holder must send you a letter telling you that you are in "default" of the mortgage agreement, and giving you 60 days to correct the default on your loan. Your mortgage cannot be legally foreclosed in this 60 day notice period, or if the letter is never sent. b) After the 60 day notice period, the lender must publish notices of the foreclosure proceedings for 8 weeks. If you occupy the premises, you must be given this notice in person at least 8 weeks before the sale. c) For a farm homestead, you may ask for a postponement of up to 12 months, to catch up on your mortgage payments. If you ask the court for a postponement, you must do so before the scheduled foreclosure sale date.

7. **WHAT DOES THE ACT REQUIRE TO CANCEL A CONTRACT FOR DEED?** Unlike mortgages, it allows a creditor to cancel a contract for deed and regain the property without going through a foreclosure process. However, for a cancellation of a contract for deed to be valid, several conditions must be met. This includes: a) valid service, by the creditor to the purchaser, or a notice of termination; b) a valid notice. To be valid, a notice must: 1) state all the conditions of default; 2) state that the contract will end 60 days from the service of the notice unless it is reinstated before that time; 3) state in bold type print, all of the conditions which must be met to reinstate the contract for deed (see below); and 4) state that the Mortgage Relief Act may be used to get you up to a 90-day extension to give you time to correct the conditions of default.

8. WHAT IF I BELIEVE I'M NOT IN DEFAULT, THAT I HAVE AN EXCUSE FOR THE DEFAULT, OR THAT THE CREDITOR HAS NOT FOLLOWED PROPER NOTICE OR PROCEDURE IN THE FORECLOSURE OR CONTRACT FOR DEED CANCELLATION? If you do, under Minnesota law you can bring a court action to challenge the foreclosure or contract for deed cancellation. (See an attorney).

9. HOW CAN A CONTRACT FOR DEED BE REINSTATED? a) The conditions of default must be corrected; b) the payments, that are due on the contract for deed, must be made current up to the date payment is made; c) the cost of serving the notice must be paid if, 10 days before the end of the 60-day period, the creditor sent a statement of those costs; d) a penalty of two percent, on any amount in default on the contract for deed at the time the notice was served must be paid. Also, if the conditions of default existed for 30 days, the creditor may demand up to \$250 in attorney's fees. Similarly, there are steps available to avoid mortgage foreclosure, and also provide provisions for redemption of the property even after a foreclosure sale. In either case, see an attorney.

The Act is complex. To pursue its protections or those of other laws, call your attorney or local legal services office. For information or referrals, call the Home and Farm Preservation Hotline toll-free at 1-800-652-9747; in the Twin Cities call 297-4111.



LEGAL SERVICES OFFICES

Albert Lea
(507) 377-2831

Anoka
(612) 421-4760, ext. 1380

Appleton
(612) 289-2613

Brainerd
(218) 829-1707

Cambridge
(612) 689-2849
Toll Free Line 1-800-622-7772

Carver
(612) 448-4880

Cass Lake
(218) 335-2223

Duluth
(218) 726-4800
Toll Free Line 1-800-622-7266

Migrant Legal Service (Fargo)
(701) 232-8872

Little Falls
(612) 632-5431
Toll Free Line 1-800-622-7774

Mankato
(507) 387-5588

Marshall
(507) 537-1588

Minneapolis Downtown
(612) 332-1441
TTY for Hearing Impaired (612) 332-4668

Minneapolis, Northside
(612) 522-6636

Minneapolis, Southside
(612) 827-3774

Moorhead
(218) 233-8585
Toll Free Line 1-800-452-3625

St. Cloud
(612) 253-0121
Toll Free Line 1-800-622-7773

St. Paul
(612) 222-5863
TTY for Hearing Impaired (612) 222-5863

Migrant Legal Services (St. Paul Office)
(612) 291-2837

Centro Legal
(612) 291-0110

St. Paul Indian Center
(612) 776-8592

Virginia
(218) 749-3270

Willmar
(612) 235-9600

Winona
(507) 454-6660

Worthington
(507) 372-7368

Minnesota State Bar Association Referral 1-800-292-4152
For the name of a local Farm Advocate, call the Minnesota Farm Hotline
1-800-652-9747.

KNOW YOUR RIGHTS

Release Date: May 1986

FINANCIALLY STRAPPED FARMERS HAVE MANY PLACES TO GO FOR HELP

As the farm crisis grows ever deeper, state and federal farmer-assistance programs are cropping up like soybeans after a spring rain. And judging from the number of calls coming into the Minnesota Attorney General's Farm and Home Preservation Hotline — about 300 a day at last count — Minnesota farmers have gotten the word that there is help out there.

But what is also clear is that the number of programs and their newness has left a lot of those callers confused about what exactly the different programs do and where people can go to find out how to take advantage of them. The following should be of help.

The Omnibus Agricultural Act passed by the legislature last session contains a considerable number of farm-assistance provisions. Not the least of these is the doubling of homestead acreage which may be exempted in bankruptcy proceedings, or the proviso that creditors must now tell any farmer whose property they've foreclosed on that the farmer has the right of first refusal when the creditors try to sell or lease that farmer's former land. There are, of course, many other provisions in the package which farmers should be aware of. Farmers can get a copy of the Farm Omnibus Bill mailed to them from House Index, State Capitol Building. They can do this by calling (612) 296-2314 and asking for House File number 1599 with special amendments.

Another new assistance program, the Farmer-Lender Mediation Act, requires a farmer and his or her creditors to sit down with a mediator to mediate the farmer's debt problem before any legal action can be taken by the creditors against the loan. In addition, the program provides for voluntary mediation. Farmers can apply for the mediation program at their local county Agricultural Extension Office. Further information is available by phoning the Attorney General's Farm Preservation Hotline (1-800-652-9747).

The state's new Debt Restructuring Real Estate Loan Program is designed to help farmers in certain situations who cannot meet their projected annual expenses. This program should be ready for applications late this summer or fall. In the meantime, farmers wanting information about this program or the loans available through an ancillary Homestead Redemption Program may call the Minnesota Department of Agriculture at (612) 296-7686.

Also, farmers can get assistance by contacting a Farm Advocate. The advocates are farmers trained by the Minnesota Department of Agriculture to help other farmers in their local area. The names of farm advocates may be obtained from the local Agriculture Extension Office or by phoning the Attorney General's Farm Preservation Hotline.

Questions on the Farm Home Administration's federal loan programs can be answered by calling the FmHA at (612) 725-5842.

Farmers looking for legal advice on the New Farm Bill may call the Minnesota State Bar Association's Attorney Referral Service at 1-800-292-4152 for referrals and the location of their nearest free Legal Aid Office.

A consumer service from the Office of Minnesota Attorney General Hubert H. Humphrey III

WORK-OUT AGREEMENTS ARE HELPING
SOME FARMERS REORGANIZE DEBT

If you are looking for methods to reorganize your farm operation during these financially difficult times, some farmers take an approach that is similar to a farmer starting a new business.

Common sense, good business planning and reviewing your farm's past history of production is the approach that is essential in considering changes and alternatives for your farm operation.

First, the farmer puts together a five year history of his farm.

Second, realistic values are figured for any costs such as land or machinery that are out of line with current market values with 5 1/2 % capitalization rates. For additional assistance, contact your local agriculture extension office for help.

Third, the adjustments that are needed to make the farm operation profitable must be presented in the new plan to the farmer's creditors. Negotiating with lenders and creditors can take many hours and many meetings. But a farmer can learn something new the lender may be looking for in his farm operation by presenting a new plan at each meeting.

Those important learning points from a meeting with the lenders may be some of the following:

The lender wants to hear more about the farm's past performance.

The lender is more interested in debt-repayment ability than the terms of repayment.

The lender is short on credit and is looking for additional credit lines to provide the mainstream credit for the farm operation.

The lender is not sold on the plan the farmer has presented and this may require the farmer and/or the farmer's agents to present many more alternative plans.

The lender may want to hear what the savings will be for them. What will the losses be for the lender and creditors if the farmer doesn't work out a new reorganization plan?

These are some of the methods that some farmers are using to resolve farmer/lender financial problems. Remember, approaches to negotiate a work-out agreement with a farmer's lender and creditors require many hours of work. If the farmer doesn't succeed at his first try, try again. Those farmers that have succeeded have been fair, patient, and willing to go back to lenders again and again to sell their ideas.

The following is an example of a financial mediation plan. This financial mediation plan has been used with the Fin-Pac Plans run by the County Extension Offices and Area Vocational Technical Institutes. Also, the use of FmHA operating loans with this financial plan have been important.

1. Value current assets based on 60-day sale with no financing available for real estate on chattel property. This gives the current market value of the farm operation.
2. List all current debts.
3. Figure cost of ownership of the real estate and compare to current cash rents. This can be determined by adding up the annual cost of owning the real estate, i.e.: interest, real estate taxes, ditching assessments and may include the principal payment. This total cost per acre should be equal or close to equal of case rent.
4. Figure the cost of chattel ownership by adding the annual interest, principal and maintenance cost together and compare to a 1-year lease of a similar piece of farm equipment from a local dealer.
5. Now that the above values have been determined, adjustments that are out-of-line should be recognized and a readjustment value determined.
6. A current and long-range, 7-10 year cash flow plan for the farm operation should be run with a local agriculture extension agent, bank, or other farm manager. This should be run with realistic yields and prices, i.e.: A.S.C.S. or University of Minnesota. A built-in 7% margin cushion on planned expenses and a 5% margin

cushion on yields based on a five year average should be used. (This margin cushion may be increased or decreased for unexpected costs. If this plan is done properly-- by going back three years prior on the schedule F. on the farm tax statement and taking an average for those three years (not to include disaster years), these average gross values should be very close to those used in the current and long range 7-10 year plan that the farmer has now devised. (The total gross operating cost is divided by the gross income and should range from 67% to 74%). If this percentage of operating costs to gross income does not fall between that range, the farmer should go back and re-value his operating expenses.

7. Now that you have the total realistic gross income of this farm, the family living, real estate loans and chattel payments and any unsecured debt, income taxes and realistic replacement cost for machinery must be figured into this gross income. If this doesn't fit, a debt adjustment through rescheduling, write-offs, balloon payments and no interest, interest rate adjustment, new lender financing, irregular payments, longer terms, or loan guarantees will have to be worked out through a work-out agreement between the farmer and the creditors equally to share in the total debt adjustment.
8. Items to be recognized in doing this are:
 1. Prioritize security based on legal and current market value. The #1 secured creditors are listed here in your new plan of action. The farmer figures his realistic proposal for debt adjustment with these #1 secured creditors that should distribute the debt adjustment and will include interest reduction, longer terms, refinancing if possible, irregular payments, or balloon payment on the end, reductions on old interest supposed to have been paid to the creditor but not collected yet and by going to the creditor for suggestions they may have for your plan of action. Now the #2, #3 and #4 creditors depending on their secured positions are figured into the farmer's plan of action, but in addition to the considerations we just discussed, write-offs of a percentage of the unsecured portion of the debt with non-recourse to the loan are figured into the farmer's plan of action.

2. The unsecured creditors are now figured into the farmer's plan of action. The farmer will figure a higher percentage of equal write-offs for these unsecured creditors (compared to a lower percentage used for the secured creditors above). Now we balance out the cash flow for your farm on scheduling these payments over a period of years that is needed to make your farm have positive cash flow. And this can be achieved by repayment of principal only over a period of years (typically 5 years) giving some interest if needed at a lower rate, irregular payment if needed for your farm's cash flow, normally 10-50% of the current debt is what would be paid back to the creditor depending on the cash flow of the farm. Now that the farmer has adjusted the debt and budgeted repayment for these creditors, a positive cash flow has been put together in this farmer's plan of action.

9. Now the farmer is ready to take copies of the new cash flow and proposed debt adjustment to the creditors and discuss and negotiate with each of them individually. If new adjustments are needed, the farmer must be flexible and willing to change the plan of action to some of the creditor's ideas. But the farmer must always maintain a positive cash flow for the farm. If the farmer feels uncomfortable at this stage in negotiating with the creditors, it is important that the farmer seek a third person that is comfortable in negotiating with the creditors and has had some successful related experiences. (This could be a professional or non-professional, but should be a non-biased party negotiating in good faith for the farmer and the creditors to provide fairness for everyone involved).

Note: The farmer can go to the county recorder's office and obtain a complete list of U.C.C. filings, mortgages, and contract for deeds, and other liens filed on the farmer's properties. The farmer can also check with the clerk of court for any judgments or conciliation court filings to determine the positioning of secured creditors for the farmer's plan of action. The farmer should seek legal counsel to determine the lien priority and secured position of the creditor.

If the farmer can get the secured creditors to go along with some plan of action, it should become easier to work with the unsecured creditors. The farmer may get less from the secured creditor than the plan of action calls for and can adjust accordingly with the unsecured creditors. If the farmer is facing foreclosure or bankruptcy, the loss may be more substantial to all of the creditors than these creditors would receive if the creditors agree to the farmer's new plan of action.

After the debt adjustment has been completed through a work-out agreement and signed by each creditor on a non-recourse contract, some farmers, because of their rural values, may eventually repay all or more of this debt adjustment to the creditors involved, but of course are not required to do so. There may be tax benefits for the farmer to do this, and benefit both parties.

This terminology seems to make a better working relationship between the creditors and the farmer. All legal questions and documents to be signed by the creditors and the farmer should be clarified by legal counsel.

Tax consequences must be determined before completion of a work-out agreement or the farmer may be in a situation that he has no control over. A work-out agreement must be realistic and protection built in, because creditors will be reluctant to renegotiate a second time.

Last, but not least, a farmer should make up several proposed farm plans, because there may be several different ways to figure a plan for the farm. And after figuring and comparing plans, the farmer may find and develop one that suits his farm operation the best.

KNOW YOUR RIGHTS

Release Date: August 1985

FARM LENDERS MUST NOW DIVULGE MORE IN THEIR LOAN AGREEMENTS

Among the farm bills passed this spring by the Minnesota legislature, is one which should more effectively alert farmers to the extent they will be indebted when they apply for loans secured by future harvests.

So informed, some farmers more readily may want to negotiate the terms of those loans.

Last year, many farmers operating on loans taken out years before and secured by present and future harvests, found that that collateral barred them from getting further crop operating loans. Banks simply wouldn't release those crops even though, in many cases, the projected worth of the future harvests far exceeded the worth of the loans.

For the past several years Minnesota statutes have allowed lenders to tie up a farmer's current and future assets for up to five years (and more through extensions) to use as collateral for a single farm operating loan. In practice, most banks simply have taken the maximum years allowed. Assuming their farmer-borrowers were aware of that practice, many banks would present them with loan agreements that often would not mention the years of assets the farmer was committing. The farmers, thinking they were tying up only those harvests whose projected value covered the loan, often unwittingly committed half a decade's worth of harvests. Many farmers were surprised to learn this when credit tightened and they went looking for more loans. Forced to look elsewhere for money, some farmers began borrowing from relatives and friends, or began renting out their land. Others, looking at too many profitless years, simply sold out.

The statutes have now been amended so that such financing statements must now show the number of future crop harvests that will be set aside as collateral for the loan.

The new law should protect the farmer from nasty surprises. Farmers should also be more readily able to weigh the value of the future crops against the amount of the loan and be able to use that information to try to get a better deal. For example, a bank may want this year's crop and next year's crop to hold as security for an operating loan for this year. The farmer may be reluctant to tie up that second year's crop if one year's crop is sufficient. So he may negotiate with his bank to take only this year's crop for security.

If his bank will not negotiate, the farmer can look around for another lender who will finance this year's operation and will require the farmer to put up only this year's crop.

But the farmer should be prepared for the consequences should his bank refuse to provide operating money for next year or any year in the future that is on the financing statement. Under the new law a bank can refuse to release its security interest, just as it could under the old statute. In such a case, the farmer would not be able to use those future crops as collateral to obtain an operating loan through some other lender. The farmer then may find himself, as before, having to go to friends or relatives for money. But he would still be unable to use profits from those future harvests as collateral since the bank would still have those crops as security against the present loan.

Farmers should be aware of the number of harvests that are to be secured and be prepared to employ other strategies should operating monies become difficult to obtain in subsequent years.

Farmers should obtain legal advice on crop financing from an attorney. At the least, farmers should be aware of the changes in the Minnesota law and understand the consequences of signing security agreements on future crops and the extent to which the terms of such agreements can be negotiated.

The Minnesota Bar Association can assist farmers in getting legal advice through the Attorney Referral Program. Anyone interested in getting such help should call 1-800-292-4152. If farmers want further information, they may call the Attorney General's Farm and Home Hotline at 1-800-652-9747.

A consumer service from the Office of Minnesota Attorney General Hubert H. Humphrey III

LIEN AVOIDANCE - A METHOD OF LAST RESORT

Some farmers were surprised to find that their long-time lender had shored-up financial agreements with them last year. Now this spring those farmers are financially strapped and looking for credit to get their crops in the fields. This is why more farmers are getting advice from their financial and legal advisors before signing any lending agreements.

The following are four approaches to discuss with your attorney.

1. Custom Farm Agreements
2. Incorporation
3. Renting-out
4. Various Subordination Agreements

The preceding approaches have been used by some farmers to survive the current economic crisis in agriculture. Each farmer's situation is different and requires professional, legal and financial advice. The approaches discussed above have been used by individual farmers that are attempting to act in "good faith" to stay in business and reduce their debts. It is important to seek competent legal advice. Farmers attempting such approaches without legal assistance and in bad faith could invalidate such legal agreements. For further information consult an attorney. The Minnesota Bar Association's Statewide Program toll-free telephone number is 1-800-292-4152 for referrals and the location of the nearest free legal aid office. The Attorney General's Farm and Home Preservation Hotline is 1-800-652-9747 or 612-297-4111.

FINANCIAL & LEGAL COUNSELING

Appeals

There are resources available to help you understand your financial options and work with your bank or FmHA.

Minnesota Family Farm Law Project

Hotline: 1-800-233-4534

Farm Advocate Program of the Minnesota Department of Agriculture is a network of farmers helping farmers. An advocate can help you get a clear picture of your financial situation and help you work with your lender to get operating loans necessary to keep farming. To find an advocate in your area call 1-800-652-9747, toll free, and ask for the Farm and Home Preservation Hotline.

Project Support, part of the University's Agricultural Extension Service, has been designed to help farm families with financial planning, stress management, and support during tough financial times. For more information call your county extension office, or call 1-800-843-4334, toll free.

Farm Crisis Hotline provides financial counseling, assistance with loan procedures and referrals. Call 1-612-634-4440.

Legal Aid Society attorneys (sometimes called Legal Services) will provide legal advice to low-income people at no charge. The Minnesota Volunteer Attorney Program is also available to provide legal assistance to some farm families.

To find the nearest Legal Aid office look under Legal Aid in the white pages or call the State-Wide Lawyer Referral Service of the Minnesota Bar Association 1-800-292-4152, toll free.

If you feel that the county cannot or will not fairly help you with your appeal you may appeal directly to the state. Write to:

Minnesota Department of
Human Services
Appeals 4th Floor, Space Center
444 Lafayette Road
St. Paul, MN 55101

For appeal information call:
1-612-296-5764

COUNSELING & REFERRALS

In addition to the information given in this brochure, the following phone numbers are staffed with people able to offer counseling and referral services to you.

1-800-652-9747 (ask for the Attorney General's Farm and Home Preservation Hot Line)

1-800-582-5260 — Lutheran Social Service

1-612-252-4121 — Caritas Family Services: St. Cloud and Central Minnesota

1-507-454-4643 — Catholic Social Service: Winona and Southern Minnesota

1-218-281-4224 — Catholic Charities: Crookston and Northwestern Minnesota

1-612-340-7500 — Catholic Charities: Rural counties surrounding the Metro area.

YOU ARE NOT ALONE

These are difficult times for rural America, and many farm families face the same problems you do. Someone is there to help if you are having trouble dealing with the bank, putting food on the table, paying last winter's fuel bills or if you just need someone to talk to. But it is important to act now. The Farm Advocates working for the Minnesota Department of Agriculture report that their number one problem is families that wait too long to seek help. Learn who can help you today.

DON'T DISQUALIFY YOURSELF

This brochure lists several programs to assist your family with food, medical care, fuel and shelter, emergency cash assistance and counseling. The purpose is to inform you of what is available and give general eligibility requirements. However, program rules are very complex, especially when dealing with farm families. You should apply for the programs you need even if you don't think you qualify. Until the proper agency has all the facts about your situation, a final decision cannot be made about your eligibility.

APPEALS

This appeals process applies to Food Stamps, Medical Assistance, General Assistance Medical and all cash assistance programs listed in this brochure. Other appeal procedures are given where necessary.

If you apply for social or financial assistance from your county welfare office and you are not satisfied with the decision, you may ask for an explanation. If you still are not satisfied, you may have your case heard by an appeals referee. The welfare office can help you with the appeal process. Appeals must be made within 30 days of receiving written notice of the action or decision.

FOOD

Food assistance is available through both government and private agencies. Income-producing property is not considered an asset for either Food Stamps or WIC (Women, Infants, and Children), which makes it easier for farm families to qualify.

Food Stamps are coupons issued monthly that are used to buy food by families with limited incomes. Apply at your county welfare or human services department. Questions? Call 1-800-652-9747, toll free, and ask for the Food Stamp Hot Line.

WIC provides coupons to buy food for pregnant women, infants, and children under five. Paperwork is minimal and many farm families may qualify. Apply at your County Health Department. Appeals for WIC are filed through the local agency. For assistance call the Minnesota Department of Health at 1-612-623-5115.

Food Shelves can supply non-perishable foods to families experiencing hardships. Food shelves are not centrally organized, so check with your local church, social services agency, or call one of the local referral numbers listed at the front of this brochure for food shelf locations.

Government Surplus Commodities are available at times in limited amounts. Contact your local social or human services agency.

Not sure who or what your local human services agency is? Call one of the referral numbers in the front of this brochure.

ENERGY ASSISTANCE

Energy Assistance Program provides financial assistance with past due and current heating bills for farm families with limited income and assets. Applications are taken from October 1st through May 31st. To find out where to apply in your area call 1-800-652-9747, toll free, and ask for Energy Assistance. Appeals for Energy Assistance are made through the local agency. If you're still not satisfied with the results, further appeal information is available by calling the toll free number listed above.

MEDICAL & DENTAL

There are several programs available to provide you and your children with medical care and assistance with past due medical bills. Information on health care is available from your county health department or public health nurse and your county welfare or social services agency.

Medical Assistance is primarily for children and pregnant women. The value of your farm machinery and supplies may have to be waived by your county board in order for you to become eligible for this assistance. Apply at your county welfare or social services agency.

General Assistance Medical Care is available for low income adults. Eligibility requirements are similar to those for Medical Assistance. Applications for both programs are taken jointly.

Services for Children with Handicaps provides medical and dental diagnostic services for children based on a sliding fee. Children need not be handicapped. For information call 1-800-652-9747, toll free, and ask for the Department of Health. Appeals for services for children with handicaps should be made in writing directly to the Department of Health. Send to:

Minnesota Department of Health
Box 9441
717 Delaware St., S.E.
Minneapolis, MN 55440

Hill-Burton Program is hospital care available in over 75 hospitals in Minnesota that are required to provide free or low cost services to low income families. Call your local hospital business office to find out if they are covered by Hill-Burton. If not, call 612-623-5444 to find the nearest Hill-Burton Hospital.

University of Minnesota Hospital also provides major medical care for low-income people throughout Minnesota. Payment for services is arranged between the patient, their county board and the hospital. To find out what the University Hospital can provide for you call 1-800-462-5301, toll free, and ask for Patient Accounting.

CASH ASSISTANCE

Cash assistance for food, utilities, mortgage payments or emergency situations may be available to you through a number of programs. To apply for any of the programs listed below, go to your county welfare or human services agency.

AFDC Unemployed Parent is monthly cash assistance available for some farm families with very limited equity and income who have children.

General Assistance is monthly cash assistance for families with limited incomes. In order for most farm families to qualify the county must waive limits on property, machinery and livestock.

AFDC Emergency Assistance is a one-time cash payment to families with children to meet emergency needs for food, medical care, mortgage payments or other necessities.

Emergency General Assistance provides one-time cash assistance for food, fuel, shelter or medical care in emergency situations.

There are no income or asset limits once available resources have been exhausted for either AFDC Emergency Assistance or Emergency General Assistance. Available resources include savings, insurance policies, grain reserves, readily disposable livestock and items not necessary for future farming.

If your county will not make allowable property limit waivers for General Assistance you have the right to appeal. Information on the appeal process is in the front of this brochure.

MENTAL HEALTH COUNSELING

Crisis Intervention

Stress. You can't see it, but you can feel it. It's real and dangerous. Stress can be harmful not only to yourself but to those around you; those you care most about. When change happens in your life, change beyond your control, you can be left feeling guilty and angry. You may do things you normally wouldn't do.

Crisis Intervention

If you feel angry or depressed, talk to someone now. If you think you might hurt yourself or someone else call one of the numbers below 24 hours a day, 7 days a week.

Southwestern Minnesota

Western Human Development Center
(Marshall) 1-507-532-3236

Crisis Line (Worthington)
1-800-642-1525, toll free.

Eclipse (Mankato) 1-507-388-9321

Southeastern Minnesota

First Call for Help
(La Crosse, WI)
1-800-356-9588, toll free.

Contact (Owatonna)
1-507-451-9100

Zumbro Valley Mental Health
Center (Rochester)
1-507-288-8750

Central Minnesota

West Central Community Services
Center (Willmar)
1-800-992-1716, toll free.

Central Minnesota Mental Health
Center (St. Cloud)
1-612-253-5555

Listening Ear Crisis Center
(Alexandria) 1-612-763-6638

Five County Mental Health Center
(Braham) 1-612-396-3333;
(Lindstrom) 1-612-257-6262

Northern Minnesota Hotline

(Fargo/Moorhead)
1-701-235-7335

Northwestern Hospitals Day/Night
Unit (Thief River Falls)
1-218-681-4240, ext. 349 or
350.

Nightingale Help Phone —
Information Referral (Grand
Rapids) Call collect
1-218-326-8565

Crisis Line (Bemidji)
1-218-751-4333

In addition to these resources, friends, neighbors, and clergy can help — just call. The county sheriff is also available anytime.

Physical Abuse

If you are the victim of physical abuse, there is a safe place to go. To find the location of the women's shelter nearest to you call 1-612-646-0994 24 hours a day — 7 days a week.

Counseling

Non-emergency counseling is also available from a number of sources. Contact your community mental health center, county welfare or social services agency. Many of the referral numbers listed in the front of this brochure or those listed under crisis intervention can also help you find agencies that provide free or low cost counseling. Help is available for depression, marriage and family problems, or other problems that stress and uncertainty may cause.



Dare To Survive

by Jo Rohady, R.N.
Coordinator, Rural Crisis Services
Metropolitan Medical Center

Severe financial problems can cause severe emotional problems. People under stress can experience anxiety, marriage and family problems, depression and chemical dependency. The severity and seriousness of these problems often vary. When people are under stress they can experience insomnia, poor appetite, nervousness and fear of what the future might bring.

As the stress continues these symptoms usually intensify and the person often has problems with concentration, decision-making, irritability and the sense of being a failure. When a person reaches this point they feel so badly about themselves they may even consider suicide. Most people feel very ashamed of their circumstances and their perception of how they are handling it. This makes it difficult for them to acknowledge to themselves and others that outside help may be needed.

Many folks have the idea that if they need the services of a mental health professional this indicates they are "crazy, stupid or hopeless." We know the stress levels that people in rural areas live with day after day are tremendous. We also know there are limits to what any person can handle. People deserve the best care that is available to them in Minnesota.

It is not always easy to find these services but with some perserverance you should succeed. There may be people in your own town that may be aware of counseling services. Local physicians and clergy serve as resources as do University of Minnesota Agricultural Extension Agents. The Department of Agriculture has Farm Advocates who can assist you in getting this information. If you are not familiar with the Farm Advocate for your region you can call 1-800-652-9747 and ask for the Farm and Home Preservation Hotline.

People are often hesitant to call because they don't know what questions to ask or what to expect. If you are under stress, an assessment needs to be made as to what would be most helpful to you. This entails discussions with someone expressing what you have been experiencing. Sometimes this is enough and no further intervention is needed. The mental health professional may suggest further individual counseling, may ask you to do some written psychological tests and may possibly recommend the use of medication. If medications are recommended, they probably would be specific to the treatment of anxiety or depression. You need to be educated about the use of any medications and this information should be readily available to you.

Under certain circumstances, hospitalization may be suggested. This is the most intensive approach for treating depression. Family or marriage counseling can be helpful as the whole family suffers during these troubled times. Often, when people are stressed they turn to chemicals as a way of dealing with their problems. This requires a chemical dependency assessment.

Many agencies, clinics, etc. may have a waiting list for appointments. Do not take this as an indication you are not important enough to get an appointment. Mental Health services throughout the state are reporting an increase in the use of their services. If they are not able to help you soon enough, you can ask if they have any suggestions or you can call the Rural Crisis Services at Metropolitan Medical Center (MMC) in Minneapolis. (612-347-4302). MMC established Rural Crisis Services to work with rural community mental health centers and other health care providers to meet the mental health needs of rural families. They can assist you in contacting a mental health professional near you. Sometimes people prefer seeing someone who does not reside in their local area. MMC's services can also help you with this.

Many agencies have sliding fee scales. Feel free to ask about charges and again do not let this stop you from getting help. If finances are a problem or it's too difficult for you to discuss this with people in your local community, feel free to call MMC for further assistance.

If you know anyone who has had treatment for stress disorders I would encourage you to talk with them. They can give you first-hand information about their experiences.

You may feel there is not hope for you but this is not true. One farmer who was hospitalized for treatment of depression told me "this is the first time in 4 years I don't have dry heaves when doing my spring planting."

Another farmer who was always closemouthed surprised himself by how much he talked the first time he talked with a stranger (who happened to be a mental health professional). He found this to be very helpful.

Another farmer felt so ashamed he would cross the street in order to avoid talking with his friends. He became severely depressed and felt his family would be better off if he was dead. Today, his farm future is still uncertain, but he feels much better about himself and is glad to be alive. He doesn't hesitate to tell people about his experiences because he knows what it feels like to be miserable.

There are many mental health services available in Minnesota. Do not let the lack of information stop you from getting what could be life-saving services. For more information about MMC's Rural Crisis Services or to refer a client to MMC's mental health program, please contact Jo Rohady, R.N., Rural Crisis Services Coordinator; Donna Krzmarzick, R.N., Director of Mental Health Nursing; or Deane Manolis, M.D.; phone 612-347-4302.

A Fact Sheet of the Community Legal Education Program of the Legal Aid Society of Minneapolis. This is not meant to give complete answers to individual legal problems. If you need legal help, see your family attorney or call your legal services office which serves low-income persons.

Some of Your Rights as an FmHA Borrower

WHAT IS THE FARMERS HOME ADMINISTRATION?

- Farmers Home Administration (FmHA) is a federal agency set up to provide loans to certain farmers unable to get credit from other sources.
- There are several kinds of FmHA loans. You may not be told that fact. If you need a loan, find out which kind is best for you; check to see if you qualify for the low-interest "limited resource" loan.
- If you are denied one type because you don't meet requirements, you may be eligible for a different type of FmHA loan; be sure to apply for the others.

GUIDELINES FOR DEALING WITH FmHA:

- Try to have a good working relationship with the FmHA county supervisor. He or she makes many important decisions about your loans.
- One of the difficulties for FmHA borrowers, according to many reports from farmers, is that many FmHA staff persons are poorly trained or the offices are understaffed. This may lead to a lack of knowledge about regulations or to arbitrariness in administering them. Although there are many excellent FmHA officials, you must know and assert your rights under the law in dealing with any FmHA official.
- It is also important for farmers--many of whom traditionally do not talk about their problems and fears, or who are used to "doing business by handshake"--to change practices in dealing with FmHA. Seek help and support in learning the law.
- If you are having financial problems, get help and take action BEFORE FmHA asks you to sell out or accelerates (asks for full payment of) your loan.
- Learn your options. If you are having difficulty making payments you have a right to ask for "loan servicing": its options include consolidation, rescheduling and loan deferrals.
- Many farmers are being labeled "bad managers", etc., when they have difficulty or fall behind in their payments. In fact, farmers are being caught in a national cost/price squeeze. Be aware of this and don't let such accusations stop you from learning and acting on your rights!

YOU HAVE MANY RIGHTS; YOU MAY NOT HEAR ABOUT ALL OF THEM FROM FmHA OFFICIALS:

- Seek out lawyers or advocates who can help you learn your rights and build your case.
- Get resources to help yourself. Do not underestimate the help and support of farmers and farm groups; you are not alone. Act assertively to get information and to challenge decisions you believe are wrong.
- Learn how to negotiate, and always try to negotiate an agreement BEFORE you are told to sell.
- Try to negotiate on every agency level. Before meeting with FmHA be ready with a new, positive proposal with which to negotiate.
- Never agree to anything not written. Don't give into pressure without first seeking help to learn your options and rights.
- If you're being denied income you need to live and operate your farm, you may have a right to it under law. (This is the subject of litigation.)
- You have the right to be informed of any adverse decision and to know the reasons for it, including the regulations on which it is based. Ask to meet with your initial decision maker (the county supervisor, for example).
- Learn deadlines and take steps to act assertively when you have a problem: ask for needed money advances; do not be afraid to demand immediate relief when you have a problem.

TAKE GREAT CARE WHEN FILLING OUT YOUR FARM AND HOME PLAN:

- The Farm and Home Plan is very important--it is being viewed as a legal and binding contract to which FmHA and you will be held, including the amount it says you need to maintain family living and farm operating expenses.
- Know your own Farm and Home Plan before visiting the FmHA office. Fill it out preferably in ink in a way which won't allow any changes to be made on it without your knowledge. Insist on this right. Don't leave a pencilled, unsigned, uncompleted plan with FmHA.
- If FmHA demands a pencilled copy, or if changes have to be made in the plan, one advocate devised this method for submitting Farm and Home Plans--go to FmHA in person with 2 copies of your plan completely filled out, one in pencil and one a photocopy. Give the FmHA official the photocopy to work with. During the discussion you make and initial each change on the pencilled copy, and the official writes and initials each change on the photocopy. After the meeting, trade copies. Later, if there are any differences between the two copies which are not initialed by you, they will have been made without your permission.
- Never agree to sign or accept a Farm and Home Plan which you feel might not work.
- Never agree to borrow more money than you really want or feel comfortable managing. (OVER)

FmHA side 2

FIND OUT WHETHER YOUR FmHA COUNTY COMMITTEE HAS DECIDED THAT YOU ARE A PROBLEM BORROWER, AND IF SO, WHAT CATEGORY YOU HAVE BEEN PLACED IN. DEPENDING ON WHICH CATEGORY IT IS, YOU MAY BE SLATED FOR LIQUIDATION UNLESS YOU ACT TO PROTECT YOURSELF:

- FmHA has three categories for problem borrowers:
 - 1) delinquent and/or problem borrowers;
 - 2) seriously delinquent and/or problem borrowers;
 - 3) severely delinquent and/or problem borrowers. IF YOU ARE PLACED IN THIS CATEGORY YOU WILL BE ASKED TO LIQUIDATE (SELL OUT).
- If FmHA has decided you are a "problem" borrower, you have to meet certain FmHA requirements to be entitled to their assistance (including loans). Among them are : 1) you must have acted in good faith; 2) you must be in circumstances "beyond your control"--this includes disasters and bad weather; 3) you must have been and are using "acceptable" management practices; 4) you must have kept real estate and/or property secured by FmHA and must have accounted for the sale of any mortgaged property.
- You have the right to ask for "loan servicing" as an alternative to liquidation! Learn about it.

IF YOU HAVE RECEIVED AN "ACCELERATION NOTICE" FROM FmHA, ACT IMMEDIATELY. IT MEANS FORECLOSURE UNLESS YOU PAY ALL THE LOAN BACK!

- You have the right to appeal. You should get legal help to do so. ACT IMMEDIATELY. Start an appeal and get a copy of your file if you don't already have one. APPEALING IS YOUR ONLY ALTERNATIVE TO TOTAL PAYBACK OR FORECLOSURE!
- You have the right to request a deferral of the payments on your loan. There are a growing number of court cases challenging FmHA's right to accelerate without 1st granting a farmer the right to apply for a deferral.
- Get help to decide if you should ask for a deferral. It may not always be the best option.
- There are now also several court rulings rejecting FmHA's practice of freezing income BEFORE the borrower has the right to appeal the acceleration decision.
- If you think the decision is wrong, contact the District Director explaining why you think so, and ask to meet with him/her in person.

WITH SOME EXCEPTIONS, YOU HAVE THE RIGHT TO APPEAL DECISIONS WHICH FmHA MAKES AGAINST YOU. DO NOT BE AFRAID TO CHALLENGE SUCH DECISIONS:

- Seek help from someone who knows the appeal process. For example, if you're denied a loan because FmHA claims you're a poor manager or lack training, or your farm isn't big enough, you can appeal. Bring legal help and/or an advocate and witnesses to any meeting.
- If you want to appeal an adverse decision, send a letter to FmHA asking for an appeal hearing. This request must be received by FmHA WITHIN 30 days of the postmark on the envelope in which FmHA mailed you the decision.
- FmHA then must schedule your appeal hearing within 45 calendar days of receipt of your written request for an appeal. If that date is not possible, you can request another date, usually not later than 15 days beyond the original hearing date.
- Before this hearing you should be offered a chance to have a pre-hearing meeting. (If not, ask for one yourself). Use this opportunity to negotiate with the original decision maker on the county level. Usually FmHA discourages farmers from further appeals. YOU MUST ATTEND THE PRE-HEARING MEETING to be eligible to appeal!
- THE APPEAL HEARING IS THE ONLY HEARING YOU WILL HAVE; FURTHER APPEALS WILL BE BASED ON THE WRITTEN RECORD OF THIS HEARING. BE PREPARED FOR THIS HEARING:
- If you think this hearing may result in a lawsuit, tape it or hire a court reporter to transcribe it so you have your own record of what actually took place. FmHA will tape and take notes on the hearing, putting together its own written SUMMARY of the hearing. Submit written evidence at this hearing.
- In the hearing, the burden of proof is on the borrower. (This is like being "guilty until proven innocent".) Here is where documentation, an organized file copy, complete record keeping, and witnesses will help you prove your case.
- You have the right to an unbiased hearing officer and an unbiased hearing atmosphere. At each appeal, decide with your advocate whether or not you need to request a different hearing officer. Your hearing should include: 1) opening statements by you and FmHA; 2) presentation of your evidence, including your chance to question FmHA officials; 3) FmHA's evidence, including a chance to question you and your witnesses, and respond to your witnesses and evidence; 4) closing summary statements by you and FmHA.
- You have a right to receive within 30 days a letter stating the decision, citing facts on which the decision is based. If you win, the letter should state the reasons for the decision and the actions to be taken. If you lose or partially lose, it should state your right to have the decision be reviewed if you request a further appeal within 30 calendar days of the date of the letter. This request should be in writing. (CONT'D, NEXT PAGE: DOCUMENTATION)

A PAST SHEET of the Community Legal Education Program of the Legal Aid Society of Minneapolis. This is not meant to give complex answers to individual legal problems. If you need legal help, see your family attorney or call your legal services office which serves low-income persons.

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FmHA FACT SHEET (side 3)

DOCUMENT EVERYTHING RELATING TO FmHA:

- If you have a problem, get all of your FmHA file before you go into an FmHA meeting. Every FmHA borrower, by FmHA Instruction 2015-8, is entitled to one, free, complete copy of his or her file, free from deletions or changes. Organize your file so you can use it in a hearing.
- If your request is denied, ask staff to call a supervisor or call one yourself if necessary. Be prepared to call Freedom of Information Officer Bob Nelson, 202/382-9638. If you are refused, let staff know you will call him if necessary.
- Although you don't have to, ask for the file in writing, stating that under regulation 2015-8 you are asking to get a complete copy within 7 to 10 days. Right then and there at the office - even before it is copied, you have the right to see it. Look through it and take notes yourself.
- Keep a written record of all FmHA contacts and document agency responses. Send a letter to your FmHA supervisor after every transaction or discussion confirming what was said or agreed.
- Never act on anything FmHA requests, orders or suggests if it is not in writing; keep copies of everything (including ALL copies of all your FmHA records including loan agreement, Farm and Home Plan, cash flow statements, etc.)
- Get letters which can be supporting documentation for you from all relevant sources, such as accountants, attorneys, neighbors, veterinarians, etc.
- If you are called in to FmHA bring a friend to witness what is said. Tape the meeting if possible; take good notes. Don't agree to anything or sign anything without first having legal or advocate help in learning your rights and options. Get a written summary of the meeting.
- Seek legal help if you need to ask anyone to prepare an affidavit (a signed sworn statement for you). (THE END)

NOTE: FmHA is not the only federally insured lender. The Production Credit Association and the Federal Land Banks were also created to provide credit to farmers. This sheet does not deal with them. Borrowers from these agencies also have rights; they should seek help to learn their rights under the law.



RESOURCES

Materials

SELF HELP RELIEF FROM MORTGAGE FORECLOSURE
by Robert Snyder (Rev. February 1986)
(Yellow booklet)

Contains legal papers to apply for Mortgage Relief Act available free from the County Extension Office or phone 1-800-843-4334 (Project Support Hotline)

FmHA Farm Loan Handbook. (1983 rev. ed.) An excellent, comprehensive handbook for FmHA borrowers. \$12. Discount for FmHA borrowers and for legal services offices; special prices for bulk rates. Write:

Center for Rural Affairs
P.O. Box 405
Walthill, Nebraska 68067

The Farmer's Guide to FmHA
Write: Minnesota Legal Services Coalition
908 Minnesota Bldg.
St. Paul, MN 55101
(612) 228-9105

Send exactly \$5.30

*This may be the most important booklet you could get for help.

Farmers Guide To Lending Law
908 Minnesota Bldg.
St. Paul, MN 55101
(612) 228-9105

Send exactly \$2.60

*Most up-to-date legal guide for a farmer.

Thinking of Moving to Twin Cities
Free Employment Counseling:
Nicollet Bethlehem Counseling
Minneapolis, MN
(612) 870-9030

Veterans (Job Subsidy Program)
1-800-692-2121
or (612) 725-4163

Advocates

- 1** Garnette Hanson
Rural Route 1, Box 71
Newfolden, MN 56738
(218) 681-6236
(218) 874-6473
- 2** Lana Anderson
Star Route 2
Goodridge, MN 56725
(218) 681-6236
(218) 378-4214
- 3** Jan Boll
Route 1, Box 135
Gully, MN 56646
(218) 268-4472
- 4** Ben Dannheim
Star Route, Box 201
Laporte, MN 56461
(218) 266-3318
- 5** Bruce & Diane Lubitz
Rural Route 1, Box 265
Perham, Minnesota 56573
(218) 346-4866
- 6** Ken Peterson
Route 1, Box 66
Tamarack, MN 55787
(218) 768-4116
- 7** Diana Hunter
Route 1, Box 11
Wright, MN 55798
(218) 357-3292
- 8** Marion Powers
Box 152
Barrett, MN 56311
(218) 685-5381
- 9** Dean Hetland
Route 1, Box 143
Eagle Bend, MN 56446
(218) 738-5374
- 10** Keith Williams
Box 176
Boyd, Minnesota 56218
(612) 855-2656
- 11** Milan Wisniewski
Rural Route 2, Box 89
Ivanhoe, MN 56142
(507) 694-1629
- 12** Harold Hutchinson
Rural Route 1
Revere, MN 56166
(507) 752-7776

- 13** Herb Schloesser
Rural Route 2, Box 222
LeCenter, MN 56057
(612) 357-6251
- 14** Jack McGill
2010 - 17th Street S.E.
Apartment #99
Rochester, MN 55904
(507) 285-1007
- 15** Janice Daley
Route 1, Box 54
Lewiston, MN 55952
(507) 523-3177
- 16** Lowell Nystrom
Route 2, Box 73
Worthington, MN 56187
(507) 372-2648
- 17** Evelyn Kluender
Route 1, Box 213A
Bricelyn, MN 56014
(507) 653-4651

Thief River Falls
Farm Advocate Center/AVTI
(218) 681-6236

MINNESOTA'S UNITED STATES SENATORS

Senator Dave Durenberger
353 Russell Senate Office Bldg.
Washington, D.C. 20510
1-800-752-4226

Senator Rudy Boschwitz
SH-506 Hart
Washington, D.C. 20510
1-800-652-9771

MINNESOTA'S REPRESENTATIVES in the UNITED STATES CONGRESS

First District

TIMOTHY J. PENNY (DFL)

Park Towers 22 N. Broadway Rochester, MN 55904 (507)281-6053 1-800-862-8632	501 Cannon Office Bldg. Washington, D.C. 20515 (202) 225-2472
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Blue Earth County Govt. Center
410 S. 5th St.
Mankato, MN 56001
(507) 625-6921

Second District VIN WEBER (IR)

Box 279
New Ulm, MN 56073
(507) 354-6400
P.O. Box 1214
Marshall, MN 56258
(507) 532-9611

919 S. 1st. St.
Willmar, MN 56201
(612) 235-6820
318 Cannon Office Bldg.
Washington, D.C. 20515
(202) 225-2331

Third District

BILL FRENZEL (IR)

8120 Penn Ave. S. #445
Bloomington, MN 55431
(612) 881-4600

1026 Longworth Office Bldg.
Washington, D.C. 20515
(202) 225-2871

Fourth District

BRUCE F. VENTO (DFL)

150 Mears Park Pl.
405 Sibley St.
St. Paul, MN 55101
(612) 725-7724

2433 Rayburn Office Bldg.
Washington, D.C. 20515
(202) 225-6631

Fifth District

MARTIN OLAV SABO (DFL)

462 Federal Courts Bldg.
110 S. 4th St.
Minneapolis, MN 55401
(612) 349-5110

436 Cannon Office Bldg.
Washington, D.C. 20515
(202) 225-4755

Sixth District

GERRY SIKORSKI (DFL)

8060 University Ave. NE
Fridley, MN 55432
(612) 780-5801

414 Cannon Office Bldg.
Washington, D.C. 20515
(202) 225-2271

Seventh District

ARLAN STANGELAND (IR)

4th Floor
403 Center Ave.
Moorhead, MN 56560
(218) 233-8631
1-800-432-3770

Federal Bldg.
720 St. Germain
St. Cloud, MN 56301
(612) 251-0740
1526 Longworth Office Bldg.
Washington, D.C. 20515
(202) 225-2165

Eighth District

JAMES OBERSTAR (DFL)

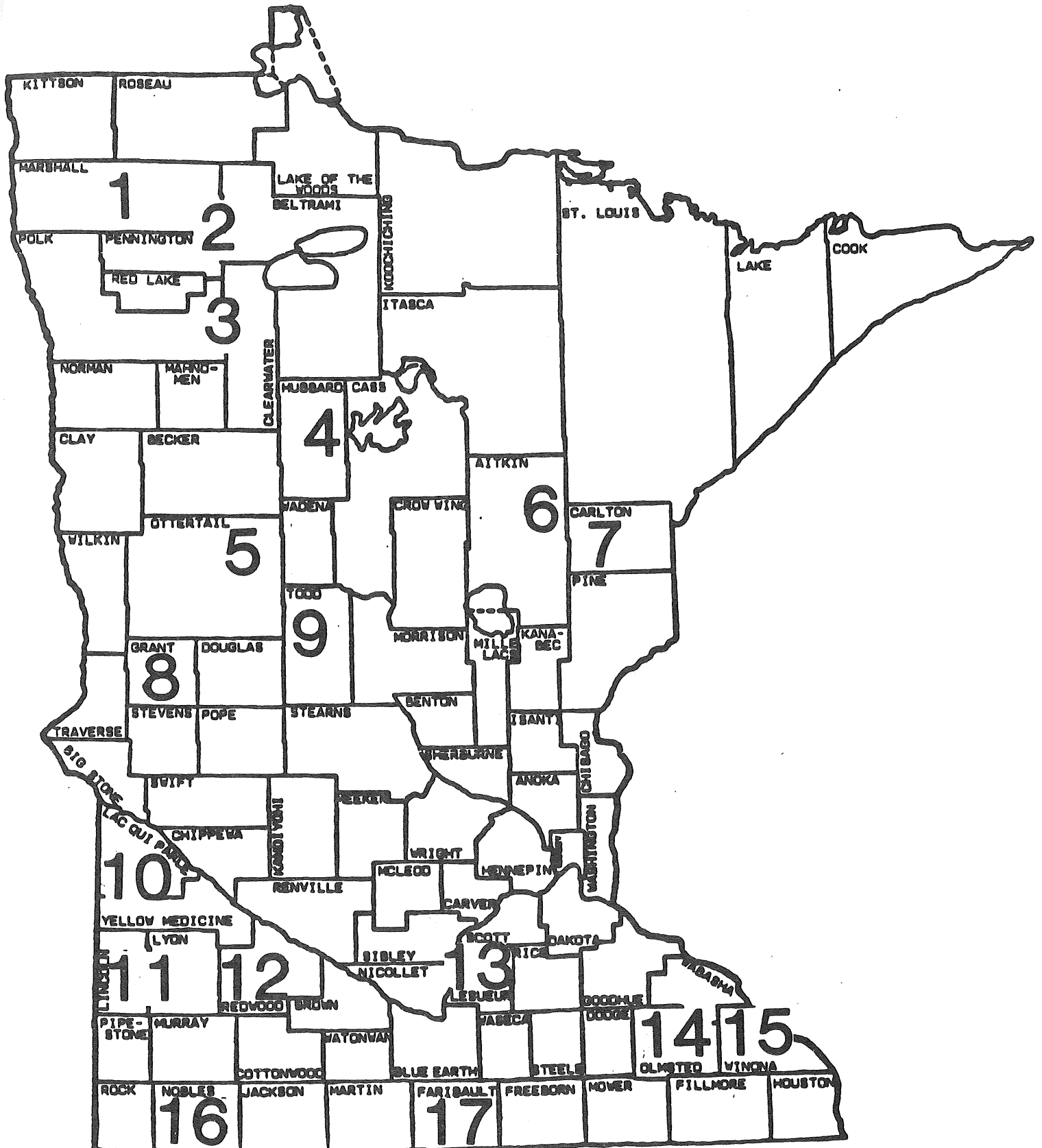
231 Federal Bldg.
Duluth, MN 55802
(218) 727-7474
Brainerd City Hall
501 Laurel St.
Brainerd, MN 56401
(218) 828-4400

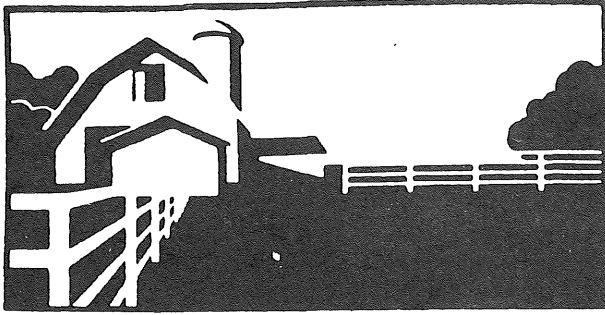
Chisholm City Hall
316 Lake St.
Chisholm, MN 55719
(218) 254-5761
2351 Rayburn Office Bldg.
Washington, D.C. 20515
(202) 225-6211

MINNESOTA DEPARTMENT OF AGRICULTURE

FARM ADVOCATE LIST

JUNE 1986





FARM CONSUMER INFO

From the Office of Minnesota Attorney General
Hubert H. Humphrey III

Farm Hotline: 1-800-652-9747
612-297-4111

Surviving the Farm Credit Crunch: Some Timely Pointers

Minnesota's farmers are caught in a tightening cost-price squeeze which makes credit availability an absolute necessity for the coming crop year. For many state farmers, the Farmers Home Administration (FmHA) is the only available credit source. FmHA was created by the federal government to aid farmers by loaning money to those who could not obtain credit elsewhere. Recently, however, more and more farmers are finding themselves at odds with the FmHA as borrowers are either unable to obtain new credit or are facing collection actions on earlier loans. If you have problems with FmHA, it is vital that you know your rights as an FmHA borrower or applicant. Although a column such as this cannot provide all the information you need, there are certain points that everyone dealing with the FmHA should know.

- Get information from every possible source. Talk with your nearest farm advocate employed by the Minnesota Department of Agriculture. To find out who that person is, contact (612) 296-1484. Do some reading. Two good sources are the *FmHA Farm Loan Handbook*, which is available for \$12 from the Center for Rural Affairs, P.O. Box 405, Walthill, Nebraska 68067, and *The Farmer's Guide to FmHA*, which you can obtain for \$6 from the Community Legal Education Program, 2507 Fremont Avenue North, Minneapolis, 55411.
- Keep good written records of your dealings with FmHA and confirm any verbal agreements in writing to protect your rights. If you have particular grievances with the way your loan is handled, consult your attorney or your nearest legal assistance office. Legal assistance has been very active in helping Minnesota farmers with FmHA problems.
- Do the best possible job on your farm and home plan. Do not accept unrealistic changes by FmHA staff, and make sure that the final plan in FmHA's possession is the one to which you agreed. You will be held to the plan and you must be able to live with it. Your county extension agent can provide valuable assistance in plan preparation. Work on establishing a good relationship with your county supervisor and other FmHA employees, but if you believe they are wrong about some decision, let them know and be ready to back up your position.
- Deal with potential problems at the earliest possible stage. Do not wait until collection activities are initiated. Learn your options and try to negotiate an agreement before you are forced to sell or your payments are accelerated. If you act quickly enough, you may be able to obtain deferrals, rescheduling or other relief. If FmHA takes action to accelerate your loan, to liquidate your operation or to deny your loan request, act immediately. Seek help from someone who knows the appeal process; obtain a copy of your file and file your appeal as soon as possible. An appeal must be filed within 30 days of FmHA's action. Seek written support for your position from family, neighbors, attorneys or anyone else who possesses relevant information.

Learn your rights and be prepared to exercise them. In today's farm economy, even the best farmers can have problems with FmHA or other lenders. Work with them, if possible, but be prepared to act and take legal steps if your interests are adversely affected.

For more information about where to go for farm credit help, contact the Minnesota Attorney General's Farm Preservation Hotline at 1-800-652-9747.

Finding a Good Attorney or Advocate

Not every attorney or advocate is experienced at helping farmers. To ensure that you have the best representation possible, ask the following questions before you get help.

DO YOU HAVE EXPERIENCE HELPING FARMERS? Because farm work is complicated, experience is necessary. Has this person worked with farm borrowers before? What types of loans? Is he/she consulting with someone who is experienced? Can he/she give you some names of other clients as references? A well intentioned but inexperienced advocate or attorney could give you damaging advice.

DO YOU SOMETIMES REPRESENT ANY OF MY CREDITORS? In small communities, an attorney may do work for the local businesses. It could be a conflict of interest if that person tried to help both parties. Does this person do work for the FmHA, Federal Land Bank, Production Credit Association, local bankers, or local suppliers? Does it seem like he/she is closer to farmers or to bankers? It is important that your attorney or advocate not be closely associated with farm lenders or suppliers.

ARE YOU WILLING TO GO TO COURT IF NECESSARY? Your attorney or advocate must be able to effectively speak up for you. You don't want someone who is afraid of arguments, and you don't want someone who becomes so angry that he/she flies off the handle and talks nonsense. You need someone who can clearly and firmly state your case.

DO YOU KNOW OTHER ATTORNEYS EXPERIENCED IN FARM LAW WHOM YOU CAN CONSULT? No matter how good an attorney or advocate is, he/she will not know the answer to everything. Farm work is very complex. A good attorney or advocate will answer some of your questions by saying, "I don't know", or "I have to look that up", or "It could go either way, we'll try". Be wary of someone who sounds like he/she has a smooth answer for everything and is unwilling to seek help from others.

CAN I CALL YOU REGULARLY AND WILL YOU EXPLAIN THINGS I DON'T UNDERSTAND? Don't be afraid to ask questions. You must have a good understanding of the case. Ask the attorney to explain if you don't understand. Bring a list of questions with you anytime you have an appointment.

CAN I CHECK WITH A FARMER WHO HAS USED YOUR SERVICES? An experienced advocate or attorney should be able to put you in touch with a farmer with whom he/she has worked in the past. See if he/she was satisfied with the advocate's or attorney's work.

WILL YOU PROTECT MY PRIVACY AND LISTEN TO MY CONCERNS? This may be the most important thing to look at in picking a person to work with. Your attorney or advocate may become part of your life. He/she may be going through all of your financial papers, and he/she will be advising you and representing you at times that are critical to your farming operation. You must be able to trust him/her; pay attention to your feelings.

NOTE: As you look for a representative, keep in mind that appeals and lawsuits are sometimes restricted by time limits. There may be a deadline (or "statute of limitations") for the action which you are considering. Ask the attorney about deadlines and be aware of them while seeking help. (This information by the Community Legal Education Program of Mid-Minnesota Legal Assistance is designed to help you learn your rights, but is not a complete answer to individual legal problems. If you need legal help, see your family attorney, legal services office or call the Farm Hotline at 1-800-652-9747.)

LEGAL SERVICES OFFICES

ALBERT LEA
(507) 377-2831

MINNEAPOLIS, NORTHSIDE
(612) 522-6636

ANOKA
(612) 421-4760, ext. 1380

MINNEAPOLIS, SOUTHSIDE
(612) 827-3774

APPLETON
(612) 289-2613

MOORHEAD (218) 233-8585
Toll Free Line 1-800-452-3625

BRAINERD
(218) 829-1701

ST. CLOUD (612) 253-0121
Toll Free Line 1-800-622-7773

CAMBRIDGE (612) 689-2849
Toll Free Line 1-800-622-7772

ST. PAUL (612) 222-5863
TTY for Hearing Impaired (612) 222-5863

CARVER
(612) 448-4880

MIGRANT LEGAL SERVICES (St. Paul Office)
(612) 291-2837

CASS LAKE
(218) 335-2223

CENTRO LEGAL
(612) 291-0110

DULUTH (218) 726-4800
Toll Free Line 1-800-622-7266

ST. PAUL INDIAN CENTER
(612) 776-8592

MIGRANT LEGAL SERVICES (Fargo)
(701) 232-8872

VIRGINIA
(218) 749-3270

LITTLE FALLS (612) 632-5431
Toll Free Line 1-800-622-7774

WILLMAR
(612) 235-9600

MANKATO
(507) 387-5588

WINONA
(507) 454-6660

MARSHALL
(507) 537-1588

WORTHINGTON
(507) 372-7368

MINNEAPOLIS DOWNTOWN (612) 332-1441
TTY for Hearing Impaired (612) 332-4668

Minnesota State Bar Association Referral 1-800-292-4152
For the name of a local Farm Advocate, call the MINNESOTA FARM HOTLINE
1-800-652-9747

KNOW YOUR RIGHTS

Release Date: July 1986

WHAT MINNESOTA'S NEW FARM PRODUCTS RULE MEANS TO FARMERS AND BUYERS

The Attorney General's Office has been getting a lot of calls lately from farmers, lenders and buyers of farm products. Most want to know about the recent changes to the law which governs the sale of farm products covered by security agreements. Before 1985, buyers of farm products, in addition to paying for those products, were also required to pay off any liens that were attached to the products if lenders holding such security amendments demanded it. This was known as the "farm products exception" or the "double jeopardy provision" since all other "buyers in the ordinary course of business" could purchase goods free and clear of any security interests. Often the payment came as a nasty surprise to the buyer.

In 1985, the legislature amended the law to provide a registration system for buyers of farm products. Lenders could then notify buyers of their security interests, allowing the buyers to know the true cost of their purchase. Upon notification by a lender, the law required the buyer to name that lender on the check for payment.

This year's legislation abolished the registration system and gave buyers of farm products the same protection provided other "buyers in the ordinary course of business." As amended, the law says that: "a buyer in ordinary course of business takes free of a security interest created by his seller even though the security interest is perfected and even though the buyer knows of its existence." This means that qualified buyers can now purchase farm products from farmers without the fear of "paying twice." Also the fact that there is a security interest doesn't by itself require a buyer to include the lender's name on a check for payment.

But there is a condition. Buyers of farm products can buy free and clear of a security interest only if they qualify as a "buyer in the ordinary course of business." Such an individual is defined by law as:

"A person who in good faith and without the knowledge that the sale to him is in violation of the ownership rights or security interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind . . ."

So, for example, a buyer who knows that a sale of farm products would violate the terms of a security agreement would not qualify as a buyer in the "ordinary course." An example would be if the agreement prohibited a sale. Then once the farmer is paid, the buyer could still be taken to court and ordered to reimburse the lender, or could be subject to a conversion action by the secured lender.

Broadly defined, conversion is: "the wrongful exercise of dominion or control over property," such as an interference with one's rights to possess property or the unauthorized transfer of property to someone not entitled to that property. Some courts have found that farmers and their agents (auctioneers, commission dealers and the like) can all be penalized in cases where the farmer, who is in default under a loan, sells secured farm products without the secured lender's consent or where the security agreement provides that a sale without the lender's consent constitutes default. Liability can also extend to the buyer if that buyer does not qualify as a buyer in the ordinary course of business.

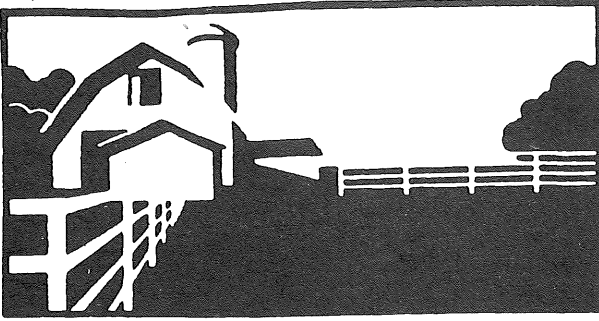
Minnesota's criminal laws provide strict penalties for conversion — up to two years in prison and a fine of up to \$4,000 or both against anyone who, "with intent to defraud," conceals, removes or transfers any personal property in which the person knows that another has a security interest.

Under federal law, a person who converts property mortgaged or pledged to the federal government, including the Farm Credit System, the Federal Crop Insurance Corporation, Farmers Home Administration and the Secretary of Agriculture is also subject to criminal sanctions. Federal law provides for a fine of up to \$5,000 or imprisonment of up to five years or both.

In other words, the new law, while it protects qualified buyers, does not alter the legal relationship which currently exists between farmers and lenders under the terms of their security agreements.

Farmers, therefore, should abide by the terms of their security agreements and cooperate with their lenders when selling farm products covered by security interests.

Anyone having further questions about the new farm products law may contact the Attorney General's Agricultural Division, 90 West Plato Boulevard, St. Paul, Minnesota 55107, (612) 297-1550.



FARM CONSUMER INFO

From the Office of Minnesota Attorney General
Hubert H. Humphrey III

Farm Hotline: 1-800-652-9747
612-297-4111

Phony Farm Loans Make for Bitter Harvest

It is always a wonder to see what comes out of the woodwork when tough economic times settle in. A good example is the self-styled money broker who seems to appear whenever hard times hit the farm.

Calling themselves "loan finders," their primary target is the farmer who, caught between low commodity prices, double-digit interest rates and eroding real estate values, is looking frantically for any kind of financing to keep the farm going. The loan finder is more than happy to oblige.

Promising, for a nonrefundable advance fee, large amounts of cash at rates of interest which haven't been seen here since the 70's, these latter-day highwaymen have a way of never quite completing the deal once that advance is in hand. In addition to never getting the loan the farmer, of course, loses his money.

Loan finders are consummate salespeople. Dripping with sincerity and legitimacy, they will convincingly talk about their access to "Arab oil money," "trust funds," or "insurance company assets" — all rather unconventional money sources to be sure, but to the farmer who has doubtless been turned down by conventional lenders, it doesn't sound too bad.

Once the bait is mouthed, the "loan finder" jerks the line. It seems that the only thing that is needed is a "modest" advance — something around \$500 to \$1,000 for a mid-sized, five-digit loan — to cover the loan finders "expenses" in pulling together the financing. The fee, of course, can't be returned.

The farmer, happy for any kind of promise, chomps the bait. Invariably he'll never see the money again, or, for that matter, the loan.

Minnesota farmers, thinking of entering a loan finding arrangement, should be aware they are taking a considerable risk. It would be wise for them to follow these tips before paying any fees to a loan finder.

(1) If the loan finder offers to negotiate any loan which would be secured by real estate, check with the Minnesota Department of Commerce, (612) 296-6319, to see whether the loan finder has a real estate license, as required by Minnesota law. If you are going to be using real estate as security, Minnesota law also protects you by requiring the loan finder to escrow all money you pay him until you actually get the loan. It also requires him to give you a written contract for his services, and to give you a list of all the lenders he contacts for you.

(2) In any event, you should check the loan finder's track record. Don't even consider doing business with the loan finder until you've confirmed that he has actually obtained loans for other borrowers. Don't simply take the loan finder's word for it.

(3) Be especially suspicious of promises of unbelievably low interest rates, loan approval that seems "too easy," or secrecy about the sources of the money.

(4) Insist on knowing the source of the money. Confirm this information by checking with the alleged source and with law enforcement agencies, the Better Business Bureau or the Chamber of Commerce where the supposed lender is located.

(5) Insist on a written contract entitling you to a full refund of all advance payments if you don't get the loan.

(6) Most important, insist that all advance fees be placed in a reliable escrow account until you actually get the loan, and insist on a written agreement that the escrowed funds cannot be disbursed without your consent.

For further information, contact the Hotline at 1-800-652-9747 or 612-297-4111.

KNOW YOUR RIGHTS

Beware the siren song of the "Loan Finder"

The sweet song of cash to be had at easy rates seems never sweeter than when heard during hard financial times. But the song is often a siren one, and those who succumb, invariably wind up poorer for their trust.

Rising steadily on the hit parade of chicanery is the song and dance of the "loan finder" — that impresario of questionable ethics whose promise is to find a loan for anyone willing to fork over a "modest" finder's fee, to be paid in advance. Often, the fee turns out to be substantial and the loan imaginary.

Sometimes called "advance fee" companies, their advertisements can be seen in magazines or in the classified section of the newspaper. Business is also solicited by direct mail.

Their self-promotion is often glowing. They often claim to have access to large (but secret) sources of money such as foreign lenders, trust funds or insurance companies. They may also tout an impressive record in getting loans for their clients. And, often their advertised interest rates beat everything else around.

It's all tempting stuff for prospective borrowers who, in many cases, have had previous loan applications denied by conventional lenders. Desperate for financing, many have been willing to put down the large, nonrefundable advance fee. For many, it's the last they see of any money in the deal. Investigations into a number of cases have revealed that often the loan finder has never obtained a single loan for customers and that, in fact, those insurance companies, foreign lenders and other money-flush sources never did exist. The borrower, who was already in a difficult financial position, winds up worse off than before.

While prospective borrowers who seek financing from unknown or unconventional lenders are probably taking a risk, there are precautions which, if taken, can protect them from financial harm.

1. Beware of a loan finder who advertises the availability of millions of dollars for loans at reasonable rates, especially when the economy is in a period of tight money.

2. Go first to a major, well-established lending institution, such as a bank or insurance company. If such an institution refuses to give you financing, determine the reason and re-evaluate your need for the money.

3. Beware of a loan finder who says the requested funds can be easily got, particularly if major lending institutions have already turned you down.

4. Seek the help of a financial expert, an accountant, an attorney or other professional who is thoroughly familiar with the financial field. The cost of hiring such an expert may in the long run save you much anguish and money.

5. Submit any proposals or contracts you receive from a loan finder to a bank or lending institution with which you are acquainted. They can give you an impartial opinion and evaluation.

6. Beware of a loan finder who is not known to local bankers and whose officers and agents are unknown to local established lending institutions.

7. Check on the reputation and credibility of the loan finder and its officers by contacting consumer protection agencies and law enforcement agencies in the area where the firm is located. If you're told the loan will be secured by a mortgage, contact the Minnesota Securities and Real Estate Division to find out if the loan finder has a real estate license. Anyone negotiating mortgage loans for others must be a licensed real estate broker.

8. Get from the loan finder a list of individuals and corporations for whom loans have been successfully found and verify those facts.

9. Do not rely on a loan finder's unaudited financial statement. Reports such as Dun & Bradstreet statements, although issued in good faith, often contain information that is simply supplied by the loan finder and are unverified by any outside source.

10. Carefully read all correspondence and documents that you receive. Letters of commitment to produce loans often contain many conditions that realistically cannot be met.

11. Beware of high-pressure sales tactics which stress the need to act swiftly or suggest that an advance fee is needed urgently.

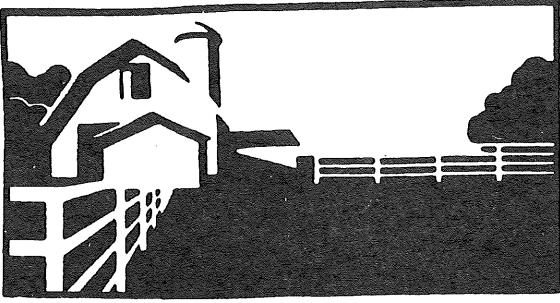
12. Do not pay any fees in cash. Use a personal or company check. If the loan finder or lender refuses to accept such a check, advise him or her that you would be happy to have the bank certify it.

13. Demand that all fees which are refundable if the loan is not secured be placed in an escrow account and held by an independent escrow agent or trustee. Many local banks will provide this service. Obtain a stipulation that you must approve any disbursements from the escrow account.

14. If the fees paid are refundable, obtain a written statement to that effect.

15. If out-of-pocket expenses are requested by a loan finder, obtain an itemized accounting of the expenditures prior to payment. If your payment is to cover expenses that will be incurred in the future, place the funds in an escrow account and get a written promise that the expenses will be paid only after submission of a documented accounting.

If it appears that fraudulent activities have occurred, contact local, state, and federal law enforcement authorities.



FARM CONSUMER INFO

From the Office of Minnesota Attorney General
Hubert H. Humphrey III

Farm Hotline: 1-800-652-9747
612-297-4111

Beware of People Peddling Quick and Easy Solutions to Your Farm Credit Crisis

It had to happen. Whenever people get desperate someone will always step forward with the quick and easy solution — for a price. According to reports received by Attorney General Humphrey, unscrupulous loan brokers and others are approaching financially strapped farmers with "quick fixes" for their farm credit problems. Don't be duped. Be on the lookout for the following potential scams:

1. **Land Patents:** People may tell you they know of a way to assure that the bank can never foreclose on your land. They may offer to sell you a land patent on the theory that the holder of a land patent has an inalienable right to that land. First, only the government can issue a land patent. Any private party who claims to have one to sell is lying or mistaken. Second, a land patent is simply a transfer of title to land from the government to an individual. Land acquired this way can be used as security for a loan and subject to foreclosure if the borrower defaults. There is no magic to a land patent.

2. **Common Law Liens:** Do not believe anyone who tells you that filing a common law lien will prevent creditors from foreclosing on your property. The owner of property cannot claim a common law lien. Moreover, common law liens apply only to personal property, not real estate, and only in the limited situation in which one person has repaired or stored the property of another. A statute has replaced common law liens in Minnesota.

3. **Loan Brokers:** A loan broker is someone who promises to try to find a loan for a fee. Some loan brokers are legitimate; others may be taking advantage of you. State law requires loan brokers who seek loans secured by real estate to be licensed by the State. If you are seeking a farm mortgage, always check to make sure the loan broker is licensed by calling the Minnesota Commerce Department: (612) 296-4026. In addition, always require a written contract and, if possible, have the contract reviewed by a lawyer before signing. Remember, any promises made to you which are not in the written contract will be difficult or impossible to enforce.

4. **Titles 12 and 15 of the U.S. Code:** You probably will not avoid the obligation to repay your farm loan by asserting violations of Title 12 (Banking) or Title 15 (Commerce and Trade). Many of the provisions of these titles do not apply to agricultural loans. In addition, cancellation of the obligation to pay back money already received is not the remedy for failure to comply with these provisions. These statutes are complicated: consult an attorney before using them as a basis for a lawsuit.

5. **Ready-made lawsuits:** People in rural Minnesota are selling ready-made lawsuits: you just fill in the blanks, file with the court and you can save your farm without the assistance of a lawyer — so they say. Beware. First, there is a rule of law that says when you lose a lawsuit, you lose all the claims you could have brought along with the claims you did lose. Thus, you can lose a legitimate claim forever by filing a ready-made lawsuit. Second, courts have the power to make you pay the costs and the attorney's fees of the other party if you file a frivolous lawsuit. Finally, no one is helped when the courts are flooded with frivolous lawsuits; the judicial system operates best when it is used with care.

6. **"Natural persons" and federal posts:** It is not true that you can avoid the application of state and federal laws by giving up your drivers license, social security number and other signs of citizenship to become a "natural person." You are subject to the laws of the county and state in which you live regardless of whether you take advantage of the benefits of citizenship. Similarly, a post on your property warning all state and federal agents and employees to stay off your land will not prevent such persons from enforcing the law. The laws protect us all: seeking to avoid them will only create more difficulties.

7. **Get-rich-quick investment schemes:** Before you invest your money in any venture, check with the Minnesota Commerce Department, (612) 296-4026, to make sure the company is licensed. Beware of investment offers made over the phone and requests of money up-front.

Remember, if a deal looks too good to be true, it probably is. Consult an attorney before paying money for solutions to your credit problems. If you need assistance or an attorney referral, call Attorney General Humphrey's Farm Hotline: 1-800-652-9747.



Farmer's Rights and the law^o

12 Rules to Help Farmers Avoid Legal Problems

1. **ASK FOR HELP!** Farm Advocates and Attorneys are available--ask what papers you should bring when you meet.
2. **GET EVERYTHING IN WRITING...**from negotiations, worksheets and plans, to agreements and changes in agreements made in person or over the phone.
3. **WRITE DOWN PHONE CONVERSATIONS...**summarize the conversation and send it by certified mail to your lender. That way, you have a written record of your transactions and proof that you acted according to an agreement.
4. **KEEP COPIES OF ALL WRITINGS** and notes of all conversations.
5. **BE WARY OF QUICK LOAN MONEY AND DEALS THAT SOUND TOO GOOD TO BE TRUE!** Unfortunately, some fellow Minnesotans can tell you about scam artists. It doesn't just happen to people in other states. Since your goal is to rid yourself of problems, make sure the loan money is legitimate. **CALL THE FARM HOTLINE TO CHECK...1-800-652-9747 or 612-297-4111.**
6. **READ AGREEMENTS OR CONTRACTS BEFORE YOU SIGN. TAKE THEM TO AN ADVOCATE OR ATTORNEY.** Don't worry about taking a few minutes to read your agreement before you sign. If you don't understand what you read, ask questions. Write the explanation on the contract. A few minutes and questions **BEFORE** you sign may save you time, money and maybe your farm. You have the right to take the agreement to an attorney or advocate before you sign. Don't let anyone rush or intimidate you.
7. **NEVER SELL OR BUTCHER ANYTHING WHICH IS SECURITY FOR YOUR LOAN WITHOUT HAVING YOUR CREDITOR'S WRITTEN APPROVAL!** You may think that what you're about to sell or butcher is trivial or unimportant, but its loss may endanger your loan. Get your creditor's approval in writing. This includes butchering animals for your own use.
8. **IF YOUR LENDER PROMISES TO GIVE YOU A CERTAIN AMOUNT OF MONEY FOR LIVING EXPENSES FROM YOUR HARVEST CHECK, GET IT IN WRITING !!** Make sure that the specific dollar amount is spelled out in writing and that your lender signs it.
9. **DO NOT GIVE ANY OF YOUR LAND OR PERSONAL PROPERTY BACK TO YOUR LENDER WITHOUT FIRST SEEING AN ADVOCATE OR ATTORNEY.** Restructuring your debt may be possible, and in addition, there may be serious tax problems if you give it back. Talk with your attorney. **TRAINED PEOPLE CAN HELP!**
10. **YOU CAN OBJECT TO A REPOSSESSION AND YOU CAN REFUSE TO ALLOW THE REPOSSESSOR ON YOUR PROPERTY.** You can object by telling the reposessor in writing or in person. They must then get a Court Order. If they persist without a Court Order, they are acting illegally by breaching the peace. If you face repossession, you may have defenses in Court--call an adocate or attorney.
11. **BANKRUPTCY MAY HELP SOME PEOPLE** but it is not the only legal solution to problems!
12. **BUT, LIQUIDATIONS OR CONVEYANCES WITHOUT BANKRUPTCY MAY CREATE TAX LIABILITIES** that you can never discharge. Seek competent tax advice before moving ahead!



Farmer's Rights and the law^o

New Garnishment Law Helps Farmers

This spring the Minnesota garnishment laws were changed to give farmers more protection. Until now, the law did not include protections for earnings from the sale of livestock, grain, and other farm products.

WHAT IS GARNISHMENT? The law allows a creditor who has gone to court and secured a judgment against you (judgment creditor) to take some of your earnings, personal property or bank account.

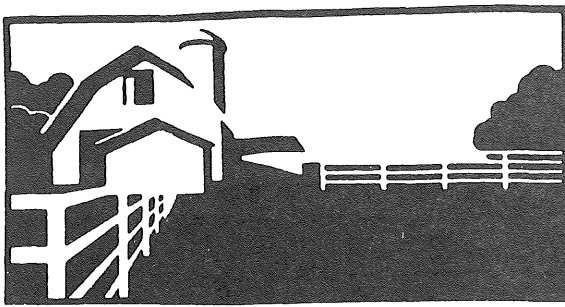
CAN ALL MY INCOME BE TAKEN? No! For example, if you are a dairy farmer, your judgment creditors can no longer garnish your milk check and leave you nothing on which to live. If you are a livestock producer and have unsecured creditors, they cannot simply garnish all of the money from the sale of your livestock. Creditors can now only garnish a limited amount of these earnings. The **MAXIMUM** amount of money that can be garnished is not more than 25% of your disposable earnings (this is an approximate figure for your use; there is a precise formula in the Minnesota Statutes.) **NOTE:** This protection does not apply to secured creditors.

CAN MY PERSONAL PROPERTY BE TAKEN? Necessary household items are always exempt, and additionally, you have a total of \$10,000 in exemptions on farm machinery and implements, unless the creditor has a security interest in the specific farm machinery or implements. This \$10,000 exemption will be adjusted for inflation in 1986.

MY INCOME IS REALLY LOW. CAN THE LAW HELP ME? If you have wages other than farm income, a certain portion is exempt; see an attorney. If you receive relief based on need--AFDC, General Assistance Medical Care, Supplementary Security Income, Medical Assistance, Minnesota Supplemental Assistance or General Assistance, this income and any earnings are exempt while receiving any of these benefits. Your earnings stay exempt for 6 months after you no longer receive relief based on need. Unemployment Compensation, Workers Compensation and Social Security are also exempt. You should receive a notice that your earnings will be garnished. Send it back immediately explaining that you are receiving assistance.

WHAT CAN I DO IF A CREDITOR IS THREATENING GARNISHMENT? If a creditor is garnishing, or threatening to garnish, your earnings, check with an advocate or attorney to make sure that the garnishment is legal. A phone call is all that it takes!!!

(This information by the Community Legal Education Program of Mid-Minnesota Legal Assistance is designed to help you learn your rights, but is not a complete answer to individual legal problems. If you need legal help, see your family attorney, legal services office, or call the Farmer Hotline... 1-800-652-9747.)



FARM CONSUMER INFO

From the Office of Minnesota Attorney General
Hubert H. Humphrey III

Farm Hotline: 1-800-652-9747
612-297-4111

Farm Finances: There is Help Available

Last year, one family farmer declared bankruptcy before considering all of the financial programs and legal options available to him. He later found that he would have been eligible for a loan from the Farmer's Home Administration at reduced interest rates. There are several programs that can assist Minnesota farmers in learning about these financial programs and legal actions at little or no cost.

Farm foreclosure is frightening, but it is important to remember that under foreclosure laws in Minnesota there are four months between the notice of default and the sheriff's sale on homesteaded property, giving a farmer enough time to explore the legal and financial options that may provide a remedy.

Many legal questions arise in the foreclosure process. What legal possibilities are there for slowing down the foreclosure process? When should a farmer declare bankruptcy? When should he use the moratorium law? A farmer's legal rights and responsibilities can be discussed at little or no cost by looking up the Legal Aid or Judicare phone number in the local Yellow Pages or calling the local operator. If a farmer doesn't qualify for Legal Aid or Judicare, another alternative is the Attorney Referral Program (1-800-292-4152), which will assist the farmer with legal options and refer him to an attorney who has agreed to discuss such matters for one-half hour for an approximate fee of \$15 to \$30. The exact charge is explained before an appointment is set up.

Bankruptcy is a legal action that some farmers have had to use to either reorganize their debts and stay farming or to gain the needed time to liquidate and sell their farm land and personal property. An attorney can help explain all the options involved.

On top of everything else, foreclosure can force some substantial tax liabilities on farmers. To find out what those may be, contact tax law specialists listed in the Yellow Pages or call the following toll-free numbers: Minnesota Department of Revenue, 1-800-652-9094 and Internal Revenue Service, 1-800-652-9062.

During these financially troubled times, it is important for farmers to be aware of the federal programs available. An example is the Farmer's Home Administration program, which is a direct course of action for farmers. Farmers should apply for a loan through FmHA even when they are told there isn't any money available at that time. It's important to apply as soon as possible because loans are approved on a first-come, first-served basis, using the date on the application form for that determination, when money does become available.

Applicants who have been denied a loan through the FmHA program should not be discouraged. The FmHA will review the application and there is an appeal process for loan denials. With the assistance of farm consultants who are knowledgeable in financial planning, farmers can appeal their loan eligibility and prove the worthiness of the loan. Once the appeal reaches the state level, it may be advantageous to have an attorney present.

Last year one farmer appealed all the way up to the state level before his eligibility was approved. That same farmer was scheduled to have a sheriff's sale on his farm under foreclosure proceedings. During this time, the farmer learned about Minnesota's "moratorium" Mortgage Relief Act that is in effect until July 1, 1989 and used it to stop the sheriff's sale. The judge granted him a stay (up to twelve months is allowed) until his loan was approved and the farm credit agency was paid out by the Farmer's Home Administration.

Attention to detail and being fully informed of the various programs and legal options is the farmer's key to financial survival. A farmer called the Attorney General's Farm & Home Preservation Hotline this past year looking for a bankruptcy attorney because FmHA had turned him down for his loan. He was put in touch with his local County Ag Extension Agent who pointed out one tax change in the financial plan and it made the difference. The loan was approved and he is still farming.

The state Department of Agriculture has phone numbers of farmers throughout the state who have information about the federal farm loan programs. These farmers are willing to assist other local farmers through the loan process to increase the chances of loan approval.

A new program called Project Support is now available to assist farmers; simply phone the local County Agriculture Extension Services office, and the program will be explained to you.

Farming is complex and every farmer's situation is unique. Knowing all of your financial and legal options before taking action can provide sound judgment in making those tough farm decisions that may alter a family's farm life.

The Attorney General's Farm & Home Preservation Hotline is a referral service providing information about legal and financial options for financially-pressed farmers. The Hotline is also a crisis line and can provide conference calls to assist a farmer in solving family farm problems. For further information, contact the Hotline at 1-800-652-9747 or 612-297-4111.

Federal income tax options for farmers in financial distress

by Philip E. Harris

Paying income taxes ought to be the least of a farmer's worries in times of financial distress. After all, it is the lack of income that causes the financial distress. It turns out, however, that income tax planning is as important at the time a farmer is giving up because of lack of income, as it is when the income is rolling in.

In times of financial distress, farmers often face two types of income tax consequences. One is the recognition of income on assets that are sold or are turned over to creditors.¹ The other is the recognition of income, or the reduction of tax attributes as a result of forgiveness of debt.²

These tax consequences affect not only the taxes the debtor must pay in the year of quitting business, but also in the following years. Tax planning is particularly important because the financially distressed debtor has several tax options, and choices made can have a significant effect on the debtor's after-tax income.

This article first discusses the two tax consequences of quitting business. The tax options that are available to the debtor will then be presented.

Transfer of Assets

One of the advantages of the cash method of accounting is the ability to defer income by deducting expenses as they are paid, and recognizing income only as assets are sold.

For example, the cost of planting a crop can be deducted in the year the expenses (such as seed, fertilizer and fuel) are paid. The income from the crop does not have to be reported until it is sold. Or, if the crop is fed to the taxpayer's livestock, income does not have to be recognized until the livestock is sold. If the livestock is breeding stock, income may be deferred for several years.

Although this deferral effect is not as great, accrual accounting also allows a taxpayer to defer income to the extent capital assets appreciate in value while they are in the hands of the taxpayer. Farmers tend to be well aware of the advantage of deferring income. However, they sometimes are surprised when it comes time to pay the taxes that have been deferred. The surprise is particularly bad news when it comes at a time

when the farmer is having difficulty paying debts.

Example No. 1

To illustrate the problem faced by some farmers, assume Farmer Brown received his farm from his father in 1975 as a gift. Because Farmer Brown had a carryover basis in the farm, his basis was \$100,000, even though the fair market value was \$400,000. Using the farm as collateral, Farmer Brown borrowed money to purchase a confinement hog feeding operation. High interest rates, high corn prices and low hog prices put Farmer Brown in financial distress. The bank threatens to foreclose on the farm — now worth \$600,000.

If the farm is transferred, whether by foreclosure or involuntary liquidation, Farmer Brown must recognize the resulting \$500,000 capital gain on his farm. If Farmer Brown has no other income, and files a joint return with his wife, the regular tax on the capital gain would be approximately \$77,500. In addition, the Browns would be required to pay about \$14,500 in alternative minimum taxes.³ Needless to say, the fact that selling assets to pay debts creates additional tax liability only adds to Farmer Brown's financial distress.

Forgiveness of Debt

Another surprise for the farmer in financial distress is that the forgiveness of his or her debts also has income tax consequences. To understand the consequences, a little background is necessary.

When a farmer receives a loan from the bank, he or she does not have to report the amount received as income, because there is an equal and offsetting obligation to repay the loan. Therefore, there is no increase in wealth.⁴ If the loan is repaid, there is no deduction for the payment of principal because the obligation to repay is reduced in an amount equal to the cash paid. Again, there has been no change in wealth.

If, however, the loan is forgiven instead of paid off, the farmer does have an increase in wealth because his or her obligation to repay is reduced without an equal cash payment. That increase in wealth is included in gross income.⁵ Section 108 of the Internal Revenue Code (IRC) grants five exceptions to the rule that forgiven debt is included in gross income. The exceptions in the order they are to be applied are as follows: 1) Forgiveness of debt that would have been a deductible expense if it had been paid;⁶ 2) The discharge of debt in bankruptcy;⁷ 3) The forgiveness of debt while the debtor is insolvent;⁸ 4) Purchase

money debt;⁹ 5) The forgiveness of qualified indebtedness of a solvent debtor.¹⁰

If a taxpayer fits in one of the five categories of § 108, the taxpayer generally will have to reduce (by the amount of forgiven debt) other tax attributes such as net operating losses, investment tax credit, or the basis of assets.¹¹ Because these tax attributes would have reduced taxes in future years, the primary effect of § 108 is to defer the recognition of income — not to forgive the recognition of income.

Because forgiven debt must generally be reported as income, and because § 108 defers that recognition of income, tax planning decisions made by a farmer can have a significant effect on both the amount of taxes that must be paid and the timing of payment.

The farmer has some choice about whether or not § 108 will apply to debt that is forgiven. If § 108 does apply, the farmer has some choices that affect when, if ever, the income must be recognized. Those options are explored below.

Declaration of Bankruptcy

One of the choices that a farmer in financial distress has is whether or not to declare bankruptcy. Unlike individuals in other households, a farmer cannot be forced into bankruptcy by creditors.¹²

The income tax effect of declaring bankruptcy is twofold. First, it may shift some of the debtor's income tax burden to the bankruptcy estate. Secondly, slightly different rules apply to debt that is discharged in bankruptcy than to debt that is forgiven while the debtor is not in bankruptcy.

Shifting the Tax Burden

When an individual goes into a Chapter 7 or Chapter 11 bankruptcy, the bankruptcy estate is treated as a separate, taxable entity.¹³ No gain or loss is recognized on the transfer of debts and assets to the bankruptcy estate.¹⁴ The bankruptcy estate takes over the debtor's tax attributes — including the debtor's basis in the assets.¹⁵ Any capital gain, depreciation recapture or investment credit recapture that is realized on a subsequent transfer of an asset by the estate to a third party must be reported by the estate.¹⁶

The resulting taxes are an administrative expense and, therefore, have first priority status in the bankruptcy estate.¹⁷ Consequently, the debtor will not be liable for the taxes since unpaid administrative expenses do not become an obligation of the debtor.¹⁸ These provisions allow the debtor to shift the burden of some income taxes to

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the bankruptcy estate by delaying (until the bankruptcy petition is filed) the transfer of assets that would trigger tax liability.

Example No. 2

If in Example No. 1 Farmer Brown had declared bankruptcy before the farm was transferred, and if the bankruptcy trustee transferred the farm to the bank,¹⁹ the capital gains must be reported by the bankruptcy estate, rather than by Farmer Brown. Therefore, the estate must pay both the regular taxes and the alternative minimum tax. If the bankruptcy estate does not have enough assets to pay the taxes, Farmer Brown still is not liable for them.

Different Discharge of Indebtedness Rules

All debt that is forgiven in bankruptcy qualifies for the § 108 rule that it is not included in gross income.²⁰ If the debtor is not in bankruptcy when the debt is forgiven, the forgiven debt is treated the same as debt discharged in bankruptcy to the extent that the debtor is insolvent when the debt is forgiven.²¹

Example No. 3

For example, assume a taxpayer has \$500,000 in debts and \$400,000 in assets. If \$200,000 in debts are discharged in bankruptcy, none of the discharges is included in gross income. If the same \$200,000 of debt is forgiven outside of bankruptcy, only the first \$100,000 of the debt forgiven will be treated like the debt discharged in bankruptcy. The other \$100,000 of the debt will be subject to the "qualified business indebtedness" rules.²²

In some cases, the qualified business indebtedness rules provide the same tax benefits as the bankruptcy rules. However, the qualified business indebtedness rules differ from the bankruptcy rules in three respects. First, all debts discharged in bankruptcy qualify for the non-recognition exception of § 108. The qualified business indebtedness rules require the debt to have been incurred for the purchase of assets used in the business.²³ This requirement should pose no problem for most farmers.

The second difference is that for debts discharged in bankruptcy, the debtor has the choice of whether to first reduce the basis of depreciable assets, or to first reduce other tax attributes.²⁴ The qualified business indebtedness rules require the taxpayer to reduce the basis of depreciable assets.²⁵

This difference has only a little practical significance because it is often advantageous to reduce the basis of depreciable assets rather than other tax attributes. Even if reducing other tax attributes is pre-

ferable, the disadvantage of reducing the basis of depreciable assets is not great.

In some cases, the third difference can have a significant effect. In the case of bankruptcy and insolvency, discharged debt is not included in gross income even if there are no tax attributes to be reduced.

The qualified business indebtedness rules allow forgiven debt to avoid recognition as income only to the extent of the debtor's basis in depreciable assets.²⁶ Beyond that amount, the debtor must include forgiven debt in income.

Furthermore, in the case of bankruptcy or insolvency, the debtor's basis in all of his or her assets cannot be reduced below his or her total debts after the discharge.²⁷ The combination of these rules means that the qualified business indebtedness rules require some debtors to recognize more income, as well as pay a higher price for the income that is recognized.

Example No. 4

To illustrate these differences, assume a taxpayer has \$400,000 in qualified business indebtedness, \$300,000 in assets, \$75,000 in net operating losses and \$50,000 of basis in depreciable assets.

If \$175,000 of debt is discharged in bankruptcy, no income will be reported, and the taxpayer's net operating loss will be reduced to zero. The difference between the debt discharged and the tax attributes ($\$175,000 - \$75,000 = \$100,000$) will never be included in income.

In contrast, if the same \$175,000 of debt is forgiven outside of bankruptcy, the first \$100,000 will be treated under the insolvency rules. The debtor would not report that \$100,000 as income, but would reduce net operating losses to zero. The basis of the depreciable assets would not be reduced as a result of the forgiveness of the first \$100,000 of debt since the insolvency rules do not require a reduction of basis below the total debt after the forgiveness.

The next \$75,000 of debt that is forgiven is subject to the qualified business indebtedness rules because the debtor was no longer insolvent when that debt was forgiven. Under those rules, the debtor has a choice with respect to \$50,000 of the debt that is forgiven. That \$50,000 can be reported as income, or the basis in the debtor's depreciable assets can be reduced to zero. The debtor has no choice with respect to the remaining \$25,000 of debt that was forgiven — it must be reported as income.

Therefore, by choosing bankruptcy, the debtor can avoid the recognition of all the income, and loses only \$75,000 of tax at-

tributes. If bankruptcy is not chosen, the debtor must recognize at least \$25,000 of income, then lose at least \$75,000 of tax attributes. In addition, the taxpayer must recognize an additional \$50,000 of income, or give up another \$50,000 of basis.

Reduce the Basis of Depreciable Assets First

In the case of debts discharged in bankruptcy or debts forgiven while the debtor is insolvent, the debtor has a choice about how to pay the price for the non-recognition of income. One option is to pay the price by reducing the following tax attributes in the order listed below.²⁸

1. Net operating losses.
2. Credit carryovers (Credit reduced by 50 cents for each \$1 of debt discharged).
 - a. Regular investment credit.
 - b. WIN credit.
 - c. Jobs credit.
 - d. Alcohol fuel credit.
 - e. Investment credit for research expenditures.
3. Capital loss carryovers.
4. Basis of assets (But not below the total debt of the debtor after the forgiveness).
5. Foreign tax credit carryovers.

The other option is to first reduce the basis of depreciable assets of the debtor.²⁹ If that reduction in basis does not absorb all of the discharged debt, the other attributes must be reduced beginning at the top of the items listed above.

The option that is chosen by a debtor will make the difference only if there will be some tax attributes remaining after all the discharged debt is absorbed. In that case, the option that is best for the debtor will depend upon the pattern of his or her income in the succeeding years.

The advantage of electing to reduce the basis of depreciable property first is that other tax attributes that will provide a tax benefit in the following year (such as net operating losses or investment credit) may be preserved. The basis in depreciable property provides a tax benefit that is spread over the depreciable life of the asset.

Preserving the other tax attributes will not be an advantage if the debtor's income will be higher in later years when the depreciation could be claimed. The disadvantage of electing to reduce the basis of depreciable assets first is that the limit on reduction in basis (i.e., the rule that the debtor's basis in all assets cannot be reduced below the debtor's total indebtedness after the forgiveness of debt) will not apply to the reduction of the debtor's basis in depreciable property.³⁰ Therefore, the election

(continued on next page)

INCOME TAX OPTIONS

CONTINUED FROM PAGE 3

could increase the price paid by the debtor for the non-recognition of income.

Two Short Tax Years

If the debtor elects to declare bankruptcy under either Chapter 7 or Chapter 11 of the Bankruptcy Code, and has property that is not exempt, he or she will have two options with respects to choosing a tax year.

One option is to continue with the same tax year that would have been used if there were no bankruptcy. The other option is to divide the tax year that would have been used (if there were no bankruptcy) into two short years.¹¹ The first of the short years ends the day before bankruptcy, and the second short year begins on the day of bankruptcy.

The option that is chosen may have an effect on whether the debtor or the bankrupt estate pays the taxes, as well as on when and how much of the debtor's tax attributes are absorbed.

Who Pays the Taxes. Since the bankrupt estate is responsible for all of the debtor's liabilities at the time of bankruptcy, income taxes that accrue before the date of bankruptcy become a debt of the estate.¹²

Consequently, the election to end a tax year before the day of bankruptcy will cause the taxes on the income earned to that point in time to become a debt of the bankruptcy estate. Since income taxes are a priority item in bankruptcy, they will be paid before other debts that may be discharged.¹³

If the election of two short years is not made, the tax on the income earned during the debtor's tax year in which bankruptcy occurs will accrue after the date of bankruptcy and will, therefore, not become a debt of the estate.

Example No. 5

As an illustration, assume a farmer who is a calendar year taxpayer is in financial difficulty and sells some assets in January to pay debts. On March 1, he decides to declare bankruptcy. If he does not elect two short tax years, the gain he realized on the sale of the assets will be included on the return he files for the full year. Those taxes will not be a debt of the bankruptcy estate.

If he elects two short tax years, the income taxes on the gain from the sale of the assets will accrue before bankruptcy was declared. Therefore, the taxes on the gain will become a debt of the bankruptcy estate.

Absorption of Attributes. The debtor's selection of a single tax year or two short tax years will also affect the amount of tax attributes that pass from the debtor to the bankrupt estate. The rule is that the bankrupt estate receives the tax attributes of the debtor as of the beginning of the tax year in which bankruptcy occurred.¹⁴

Therefore, if the debtor chooses a single tax year, the attributes that he or she has at

the beginning of that year will pass to the bankrupt estate, and cannot be used by the debtor on the tax return for that year.

If the debtor chooses two short tax years, the attributes do not pass to the bankrupt estate until the beginning of the second short year. Therefore, the debtor can apply the tax attributes on his or her return for the first short year.

If the debtor has income before the date of bankruptcy, it is usually to the debtor's advantage to choose two short years. By doing so, the debtor not only makes the taxes on that income a debt of the estate, but will reduce the amount of taxes owed on that income.

The reduction of the taxes is an advantage to the debtor if the estate does not have enough assets to pay the tax because the taxes will not be discharged in bankruptcy,¹⁵ and will become a debt of the debtor when the bankruptcy estate is closed. The cost to the debtor of applying the tax attributes to his or her own return by electing two short years is a potential reduction in the amount of tax attributes that pass from the bankrupt estate back to the debtor when the estate is closed.

If the bankrupt estate would absorb all the tax attributes anyway, the use of the attributes in the debtor's first short year will have no effect on the attributes that are passed back to the debtor.

Conclusion

Tax planning is as important for farmers in financial distress as it is for those who have a lot of profit. Income tax consequences are triggered by the sale of assets and by the forgiveness of debts.

The farmer's choice of whether or not to declare bankruptcy will affect his or her income taxes. If bankruptcy is chosen, the farmer can further affect his or her income tax liability by electing to reduce the basis of depreciable assets before reducing other tax attributes, and by choosing two short tax years rather than the farmer's regular tax year.

The farmer should carefully consider the effect of each of the above choices because they can have a significant effect on both the taxes due for the year of bankruptcy as well as the taxes due in the years following bankruptcy.

Footnotes

1. I.R.C. §§ 1231, 1245 and 1250.
2. I.R.C. § 108.
3. The Tax Reform Bill of 1985 (as reported out of the U.S. House of Representatives Committee on Ways and Means) includes a provision that eliminates the long-term capital gain exclusion as a minimum tax preference item for farmers who are insolvent at the time of the transfer that triggered the long-term capital gain.

To qualify, a farmer must use substantially all

the proceeds of the sale to pay off debt. During the tax year, the farmer must also transfer 90% or more of the land held at the beginning of the year. A taxpayer is treated as a farmer if 50% or more of his or her average annual gross income for the three preceding taxable years is attributable to the farm business. H.R. 3838, 99th Cong., 1st Sess. (1985).

4. *Lorenzo v. Dilks*, 15 B.T.A. 1294 (1929); *William H. Stayton Jr.*, 32 B.T.A. 940 (1935).
5. *U.S. v. Kirby Lumber Co.*, 284 U.S. 1 (1931).
6. I.R.C. § 108(e)(2).
7. I.R.C. § 108(a)(1)(A).
8. I.R.C. § 108(a)(1)(B).
9. I.R.C. § 108(e)(5).
10. I.R.C. § 108(a)(1)(C).
11. I.R.C. § 108(b).
12. 11 U.S.C. §§ 303(a) and 1307(a).
13. I.R.C. § 1398(a).
14. I.R.C. § 1398(f).
15. I.R.C. § 1398(g).
16. I.R.C. §§ 1398(e)(1) and 1398(e)(3)(A).
17. 11 U.S.C. § 507(a)(1).
18. *In re Lambkin*, 33 Bankr. 11 (Bankr. M.D. Tenn. 1983).
19. If the secured debt on the property is greater than the value of the property, the trustee may abandon it rather than transfer it to a third party. Abandonment puts the property back in the hands of the debtor, and a subsequent transfer from the debtor to a third party would force the debtor to recognize the tax consequences.
20. I.R.C. § 108(a)(1)(A).
21. I.R.C. § 108(a)(1)(B).
22. I.R.C. § 108(a)(1)(C).
23. I.R.C. § 108(d)(4)(A).
24. I.R.C. § 108(b)(5).
25. I.R.C. § 108(c).
26. I.R.C. § 108(c)(2).
27. I.R.C. § 1017(b)(2).
28. I.R.C. § 108(b)(1).
29. I.R.C. § 108(b)(5).
30. I.R.C. § 108(b)(5)(B).
31. I.R.C. § 1398(d).
32. 11 U.S.C. §§ 502(b) and 507(a)(7)(A).
33. 11 U.S.C. § 507(a)(7)(A).
34. I.R.C. § 1398(g).
35. 11 U.S.C. § 523(a)(1)(A).

Antitrust appeal accepted

In the September issue of *Agricultural Law Update*, a report was made on an antitrust ruling in the beef industry (See p. 6).

This decision has been appealed, and the Supreme Court has granted review. *Cargill Inc. v. Monfort of Colorado Inc.*, Case No. 85-473 (54 U.S.L.W. 3446 (1986)).

The appellant has raised issues concerning whether a competitor fearing heightened competition is entitled to an injunction, and whether a court may condemn a merger that increases concentration within the beef industry without considering competition from immediately adjacent industry segments or other factors that prevent non-competitive behavior.

— Terence J. Centner

KNOW YOUR RIGHTS

Release Date: May 1986

REFINANCING YOUR HOME? BE READY FOR DELAYS

Today, with fixed rate mortgages available for under 10 percent for the first time in ages, every sector of the real estate industry is partaking in the biggest financing boom in eight years.

Because of the sheer volume of new loans and refinancing applications, mortgage loan officers are getting difficult to see. In many places, borrowers can't just walk in off the street and expect to speak to a loan officer. Some lenders are requiring appointments three to five weeks in advance. If you are not an established customer, some mortgage bankers are advising people refinancing mortgages to go elsewhere. A few even require "reservation fees" that can be applied against closing costs in order to weed out half-hearted borrowers.

Even lenders who don't have difficulty coping with the increased volume of mortgage applications are finding that it takes three to five weeks longer to close mortgages because appraisers, attorneys, title companies, and credit bureaus are swamped.

Because of the chaos in the refinancing sector especially, it is worth keeping a few key points in mind. Conventional wisdom says that it is worth refinancing your home if you can get a rate about two points below your current mortgage and recover the costs of refinancing within two to five years. With many buyers currently holding 13, 14 and 15 percent mortgages written just two or three years ago, the arithmetic of refinancing has become appealing.

For example, a homeowner with a 30-year, fixed-rate mortgage for \$80,000 at 13 percent would pay \$884.96 per month. Refinancing the entire amount at 10 percent reduces that monthly payment to \$702.06, for a monthly savings of \$182.90. Assuming closing costs of \$3,200, it would take only 18 months to recoup those costs. That is precisely why the system is now so overloaded that in some areas it is beginning to break down. In the metropolitan Twin Cities area for example, appraisals are running 6 to 12 weeks behind schedule for VA loans, 4 to 8 weeks behind for FHA loans and 4 to 6 weeks behind for conventional loans.

Some mortgage companies are so jammed with applications that they are no longer offering a 60-day guarantee on interest rates for refinancing because they can't be sure that the appraisal and other necessary preliminary work will be done in time.

With the current high level of business in mind, the following points are important to remember:

(1) When shopping for a mortgage or for refinancing, closing costs and points should be checked as carefully as the interest rate. It is often these associated costs which determine whether a refinancing package makes sense for you.

(2) Be aware that the typical 60-day guarantee on interest rates, or "lock-in" agreement may not be available, that it may expire before your application is completely processed, or that it may prevent your taking advantage of any further decrease in interest rates.

(3) Remember that once you have begun the application process with one mortgage company, you may not be able to transfer your mortgage application, credit history or appraisal to another lender. Be prepared to stick with the lender you begin the process with or to pay additional expenses if you start all over again with another mortgage company.

(4) Be aware that once your mortgage is completed, it may immediately be sold or transferred to another company in another state. Some borrowers are unpleasantly surprised to find that they are sending their monthly payments to Dallas or Philadelphia rather than to their neighborhood mortgage banker.

(5) Finally, be prepared to wait. The log jam in the mortgage banking industry has led to substantial delays in the processing of mortgage applications.

Further information about the mortgage application process and the current situation may be available from the Mortgage Bankers Association of Minnesota, 666 Transfer Road, St. Paul, Minnesota 55144. For general information about mortgage refinancing, contact the Attorney General's Commerce Division, 1100 Bremer Tower, 7th Place and Minnesota Street, St. Paul, Minnesota 55101, (612) 296-9412.

A consumer service from the Office of Minnesota Attorney General Hubert H. Humphrey III

KNOW YOUR RIGHTS

Release Date: July 1986

NEW RIGHTS FOR MORTGAGE BORROWERS

The 1986 Minnesota Legislature adopted a new law which provides a number of rights and protections for Minnesota homeowners whose mortgages establish escrow accounts or who are not currently in possession of the abstracts of title to their real property. The new legislation responds to a variety of consumer complaints generated by the numerous recent transfers of the servicing of mortgages on Minnesota real estate to large institutional servicing companies, which are generally located outside Minnesota.

In the past two years, several of Minnesota's largest mortgage lenders have sold or transferred their rights to service mortgages, which they made to Minnesota homeowners, to institutions in California and other states. The transfers have caused serious communications problems for some borrowers, who were unable to determine the correct amount of their monthly payments and whether their real estate taxes and homeowners insurance premiums were properly paid. In many instances, borrowers were simply unable to contact the new servicing company or to obtain a timely response to their inquiries.

Under the new law, which takes effect on August 1, if a lender sells the rights to collect payments to a mortgage on residential Minnesota real estate, the lender must notify the borrower of the sale within 10 days. In addition, a detailed financial breakdown, specifying the monthly payment amount, interest rate, and current escrow account balance, must be provided.

The new lender, who will be receiving payments in the future, is also subject to several requirements. First, it must issue corrected coupon or payment books, if they are used. Second, within 20 days after the first payment to the new lender is due, notice of the name, address and telephone number of the person from whom the borrower can receive information regarding servicing of the mortgage must be provided. The new lender must also provide, within the 20 days, information regarding any changes in the mortgage, including changes in payment or escrow requirements.

The new law also provides several rights for homeowners whose mortgages establish escrow accounts for the payment of real estate taxes or insurance. Under the law, tax and insurance payments must be made by the lender in a timely manner, except where there are not sufficient funds in the escrow account to make the payments. If there are insufficient funds in the escrow account, the lender is required to promptly notify the borrower of the shortage. Lenders who fail to make tax and insurance payments on time are liable to the borrower for any actual damages suffered by the failure to pay.

Another feature of the new law responds to problems raised by the loss or misplacing of abstracts of title on Minnesota real estate. The new law replaces a 1984 law which required that abstracts on Minnesota real estate be stored within Minnesota.

Most real estate in Minnesota is what is referred to as "abstract" property. In the case of abstract property, title is normally established by review of an abstract, which is a lengthy legal document summarizing all purchases and sales of a parcel of real estate over the years, as well as any liens or encumbrances on the property. If an abstract should become lost or misplaced, it will be impossible to sell or mortgage the property until a new abstract has been prepared, often at a cost of \$1,000 or more. While the abstract is generally regarded as the property of the homeowner, typically abstracts on mortgaged property are retained by the mortgage lender or a title insurance company until the mortgage has been paid in full. With the recent rash of transfers of mortgage servicing rights, some abstracts have become lost or misplaced. Oftentimes, it is the homeowner, unable to establish which party last had possession of the abstract, who is required to pay the cost of preparing a new abstract to complete a sale or refinancing transaction.

Under the new law, a lender or title company holding an abstract of title on Minnesota real estate must transfer the abstract to the owner of the property or to the mortgage borrower before August 1, 1987. After August 1, 1987, all abstracts are required to be provided to the owner or borrower at the time of closing. A title company or lender which fails to comply with the new law must pay the cost of preparing a new abstract.

Homeowners who receive possession of their abstracts under the new law will be responsible for the care and safekeeping of the document. Because of the high cost of replacement, abstracts should generally be stored in a safe, fireproof area, such as a safety deposit box.

Further information about these new rights for homeowners of mortgaged or abstract property can be obtained by contacting the Attorney General's Commerce Division, 1100 Bremer Tower, Seventh Place at Minnesota Street, Saint Paul, Minnesota 55101, (612) 296-9412.

A consumer service from the Office of Minnesota Attorney General Hubert H. Humphrey III