

**Elevator Failure and Provisions for Recoveries
Under the Iowa Indemnity Fund**

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The state and/or the federal government must license elevators operating in Iowa. Two types of licenses may be required. The first type is known as a warehouse license. If the elevator offers storage services to the public and issues warehouse receipts, a warehouse license from either the state or federal warehouse authorities is required. Warehouse licensing implies that the elevator's storage facilities and financial records are periodically inspected without notice to determine whether or not sufficient grain is available to meet its warehouse receipt obligations.

Iowa law also requires an Iowa Grain Dealer's license for all commercial buyers of grain. Thus even an elevator with a federal warehouse license must also hold a Grain Dealers License issued by the State of Iowa if it purchases grain in the state. The holders of these licenses must also meet a set of minimum financial standards to hold the license.

Those who deposit grain in a licensed grain warehouse or sell to a grain dealer face risk of loss in the event that the dealer or warehouse fails. Although an extremely small percentage of elevators fail each year, the consequences to local sellers and depositors can be disastrous. Both federally licensed and state licensed facilities have some protection for holders of warehouse receipts when an elevator fails. Warehouses that are federally licensed must hold a performance bond to cover cases where there is insufficient grain to satisfy warehouse receipts issued. State licensed facilities pay into a State Indemnity Fund which would cover instances where there is insufficient grain to cover warehouse receipts issued. **Thus the type of warehouse license is an important factor in determining the type of protection and the level of protection enjoyed by warehouse receipt holders.**

A grain warehouse or a grain dealer may "fail" in several ways. The most obvious type of failure occurs when the warehouse or grain dealer files under Chapter Seven or Chapter Eleven of the Bankruptcy Code. This may occur in various ways including voluntary action by the debtor or an involuntary action by creditors. Bankruptcy filing may be precipitated when lenders intervene and withdraw existing credit or when they refuse to issue additional credit. However failure may also occur when warehouse licensing authorities intervene by either suspending or revoking the warehouse or grain dealer's licenses to store or purchase grain.

Iowa licensed warehouses and dealers are required to participate in funding an indemnity fund to cover the portion of the loss when a warehouse or dealer failure occurs. This fund does not "guarantee" full value of grain deposited in a state licensed warehouse or sold to a dealer. It does, however, provide some protection for producers who have deposited grain in a state licensed elevator or who have made a cash sale of grain to either a state or federally licensed elevator holding an Iowa grain dealer's license.

The Indemnity Fund Board makes decisions on disbursements. The board consists of elected officials and four industry representatives. The Secretary of Agriculture and Land Stewardship (IDALS), the Iowa Commissioner of Insurance, The Iowa State Treasurer or their

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designees are the government representatives. The industry officials represent producers and grain industry. Two must be actively involved in grain production and two must be actively participating grain dealers and warehouse operators.

Filing Claims for a Loss

A depositor or seller may file a claim against the fund only after (1) IDALS warehouse authorities have revoked or terminated the licenses of the dealer or warehouse OR (2) after the warehouse operator has filed a bankruptcy petition. This claim should be filed within 120 days of the time the grain dealer license or warehouse license is revoked or terminated.

Claims for grain delivered for storage can be made if the owner holds a valid warehouse receipt or a scale ticket as evidence of delivery and deposit. Claims for grain delivered by a producer-seller to a dealer for cash sale or exchange (and not paid for by the dealer) are based on an obligation sale document issued on the date the sale was made. In the event of partial payment, only the amount unpaid would be counted when determining loss.

It should be noted that any legal holder of a state warehouse receipt or person entitled to possession may file against the fund. Thus lenders, other creditors, warehouse operators, government agencies and other depositors legally holding warehouse receipts can file to participate in the benefits. This is not true for grain delivered for sale. The term “seller” is defined strictly to include only “grain which the seller has produced or caused to be produced.”

The board is empowered to determine the validity of all claims. Claims not accepted may be appealed to the district court of Polk County or in the county where the seller resides.

Valuation of Losses

Value of loss – warehouse claims. The board determines the dollar value of a claim incurred by a depositor holding a warehouse receipt or a scale weight ticket for grain that the depositor delivered for storage to the licensed warehouse operator. If the department has been appointed by the court as receiver of the grain assets of the warehouse operator, the value is presumed to be as stated in the plan of disposition approved by the court. If the warehouse operator has filed a petition in bankruptcy, the value is presumed to be based upon the fair market price, free-on-board from the site of the warehouse operator, being paid to producers for grain by the grain terminal operator nearest the warehouse operator on the date the petition was filed. If there is neither a department receivership nor a bankruptcy filing, the value is presumed to be based upon the fair market price, free-on-board from the site of the warehouse operator, being paid to producers for grain by the grain terminal operator nearest the warehouse operator on the date of

license revocation or cancellation. If more than one date applies to a claim, the board may choose between the two. However, the board may accept an alternative valuation of a claim upon a showing of just cause by the depositor or department. All depositors filing claims under this section are bound by the value determined by the board. The value of the loss is the outstanding balance on the validated claim at time of payment from the fund.

Value of loss – grain dealer claims. The dollar value of a claim incurred by a seller who has sold grain or delivered grain for sale or exchange and who is a creditor of the licensed grain dealer for all or part of the value of the grain is based on the amount stated on the obligation on the date of the sale. If the sold grain was unpriced, the value of a claim is presumed to be based upon the fair market price, free-on-board from the site of the grain dealer, being paid to producers for grain by the grain terminal operator nearest the grain dealer on the date of the license renovation or cancellation or the filing of a petition in bankruptcy. If more than one date applies to a claim, the board may choose between the two. However, the board may accept an alternative valuation of a claim upon a showing of just cause by the seller or department. All sellers filing claims under this section are bound by the value determined by the board. The value of the loss is the outstanding balance on the validated claim at the time of payment from the fund.

Payment for Losses

Once claims have been validated and the level of losses established, the payments may be made by the board to the extent balances in the fund are available. Payments will not cover 100% of the losses. Payments for losses are authorized for 90% of the established value of the loss. However, a payment cap of \$150,000 per claimant is in force. Thus, actual recovery may be less than 90% when a claimant's losses exceed \$166,666.65.

It is possible for claims against the fund to exceed the money or assets available to pay them. The State of Iowa does not assume obligation for the payment of claims. If the fund does not contain sufficient assets, the claims will be paid in the order they were found to be valid. As a result the depositor or seller may not receive payment promptly even after a valid claim has been established. Presumably these depositors or sellers would be paid from future assessments under the act in order of their claims.

The indemnity fund requires depositors or sellers to pursue all means of recovery for the loss prior to payment for the loss. The depositor must cooperate with the board and the Department of Agriculture and Land Stewardship in obtaining recoveries. Depositor claims or actions may not be compromised or settled without consent of the board.

Credit Sales Contracts

Credit sales contracts (e.g., deferred payment or deferred price contracts) are one type of sale *specifically excluded from coverage under the fund*. These types of sales are legal and they are valid marketing tools under some sets of circumstance. For example, when storage is short they move grain into the market channels promptly and help eliminate backlogs. Producers have also used them widely to delay recognizing income from one year to the next.

However, they do not represent a cash transaction where payment is due under the indemnity program. Instead they are usually written so that the seller cannot be paid prior to some future

date. The seller turns title to the grain over to the elevator in exchange for the buyer's promise to pay in the future. In liquidation, these sales are treated as unsecured credit along with other unsecured loans to the failed elevator or dealer. At the time the contract is initiated the producer is required to sign a document stating that it is understood that the transaction is not covered by the indemnity fund.

In most cases, recovery of losses by those holding credit sales contracts must be handled through the bankruptcy liquidation or reorganization processes. Recent changes in the bankruptcy laws provide for preferential payment of up to \$4,000 to sellers of grain. (The figure is inflation adjusted and now stands on \$4,400). However, where there are a large number of sellers who qualify for this treatment in relation to the available pool of funds it is unlikely that sellers would receive even the full \$4,400.

Acceleration of Bankruptcy Proceedings

Payments for grain due under the indemnity fund or due as a common creditor of the failed elevator are dependent on determinations by the bankruptcy court. The indemnity board calculates loss claims net of amounts received in dissolution. Other sellers or depositors not covered under the fund are likewise dependent on the court decisions. The bankruptcy laws permit expedited disposition of grain and grain proceeds held by a debtor in a grain storage facility. Applicable time periods may be shortened so that the entire disposition may take less than 120 days, although this not certain. This expedited procedure may be requested by a bankruptcy trustee or by any person claiming interest in the grain.

Checklist for Producers With Claims

1. Locate appropriate scale tickets and warehouse receipts
2. Locate appropriate sales documents (both the cash and credit sales contracts)
3. Participate in meetings held for depositors and sellers
4. File claims promptly
5. Notify landlords of the situation if their grain is affected; landlords should check their landlords' lien status in light of changes effective July 1, 2001
6. Notify lenders with a security interest in the grain
7. Assess the impact on cash flow to your operation
8. Discuss with lenders any changes in projected cash flows for your farm operation
9. Consult your attorney about specific applications of the law to your situation
10. Discuss your situation with tax advisors and determine tax implications for you

? and justice for all

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