

# Report Addresses Failure To Deliver Contracted Grain

URBANA, ILL.

Loss of a crop to a flood usually will not excuse a farmer's obligation to deliver grain at harvest under a forward contract otherwise legally enforceable, concludes a new University of Illinois Extension study. The full report, "Grain Contracts, High Prices, Floods, and Failure to Deliver," (<http://www.farmdoc.uiuc.edu/legal/index.asp>) is available on Extension's farmdoc website.

"The 2008 flood that wreaked havoc on Midwestern farmland and contributed to an increase in grain prices compared to the fall of 2007 has left some grain farmers wondering what to do if they cannot deliver on forward contracts to sell grain entered into before their crops were lost," said Donald L. Uchtmann, a professor emeritus in the Department of Agricultural and Consumer Economics, who co-authored the report with colleague A. Bryan Endres and Stephanie B. Johnson, a law student.

"Also, some elevators may be wondering what would happen if an unscrupulous farmer, who contracted to sell grain to the elevator when prices were lower, were to ignore these contracts for future delivery and, instead, sell the grain on

a higher spot market."

Is an agreement to sell grain binding even if it was never signed by the farmer? What damages might be assessed against a farmer who fails to deliver grain as required by contract? Is a farmer liable for breach of contract if the farmer files bankruptcy? What happens to contracts for future delivery if the elevator loses its grain dealer license? The report, made possible with the support of the Illinois Bar Foundation and State Bar Association, addresses these questions.

"In general, a farmer whose crop was lost to the flood of 2008 should not breach a contract, purchase substitute grain, or enter into a settlement with a grain elevator without seeking legal advice," the authors conclude. "The best way to avoid a breach of contract lawsuit may be to negotiate a settlement with the elevator.

"Alternatively, a farmer could purchase grain from a third party to deliver to the elevator, thereby fulfilling the farmer's contract obligation. Through such actions, farmers may avoid litigation costs, the elevator's incidental costs of purchasing substitute grain, and perhaps the elevator's attorney fees that otherwise would be incurred." Δ