

# Farmer Protection Against Grain Elevator Bankruptcies

During 1980 and 1981, some 26 grain elevators across the United States declared bankruptcy. That is not many elevators when you consider the thousands of elevators that dot the rural areas across the Nation. But losses at these 26 elevators involve several million bushels of grain, several million dollars, and many hundreds of farmers. Oregon and the Pacific Northwest have had their share of elevator bankruptcies, and the depressed economic conditions continue to take a toll on grain elevators in the region.

## Why Do Grain Elevators Go Bankrupt?

Grain elevators are similar to other businesses in a community. Most are well managed and efficiently operated. With the economic climate that now exists, however, even the best managers are challenged to maintain a financially sound, healthy business. Low operating margins, declining volumes, high interest rates, and shifts in transportation rate structures can inflict heavy financial burdens on even the best run elevator operations.

Under such conditions, poor management can result in a financially weak or insolvent elevator. Symptoms may or may not be obvious, such as failure to replace worn-out machinery, speculative buying and selling, improper merchandising of producer-owned grain, and other poor management decisions.

## Grain Ownership and the Elevator

A grain elevator has two basic roles; it stores grain and it merchandises (buys and sells) grain. The elevator charges a fee for the costs of storage (handling, treatment, management, and so forth), but grain that you have placed in storage still belongs to you. Under Oregon law, a scale ticket or warehouse receipt verifies this ownership.

The merchandising function of an elevator is distinct from the storage function. In its merchandising activities, the elevator is involved in changing ownership of grain. Many of the disputes that arise in elevator bankruptcies are the result of transactions occurring in the grain merchandising function of an elevator.

For example, if the elevator declares bankruptcy between the time it sells your grain and the time you are paid, you no longer own the grain and have become a creditor of the elevator instead. There

are probably a lot of other creditors at the time bankruptcy is declared and not enough cash to satisfy them all.

## Oregon's Grain Lien Law

As a result of farmer inequities experienced in Oregon bankruptcies in recent years, the State of Oregon adopted a grain lien law in 1981 that offers some specific legal protection for the producer in the event of elevator bankruptcy.

Briefly, this legislation creates a first-priority lien on grain sold by farmers. When an agricultural producer sells grain, he has a lien on the grain and proceeds for 90 days. This lien is higher priority than a lien or security interest held by creditors of the elevator. The producer who claims the lien under this law need not file any notice of the lien in order to establish this right.

Moreover, provisions of the law allow the agricultural producer to extend the duration of this coverage an additional 90 days by filing appropriate documents with the Secretary of State. The grain lien law provides help, but it does not offer complete protection, nor can it always protect you from poor management. There are other things you can do to protect yourself.

## You Can Protect Yourself

Perhaps the simplest advice in protecting yourself against elevator bankruptcy is to do business with reputable, well-managed firms. Most of the time you can identify these elevators. But sometimes you can't, and the following list of questions may help you to evaluate the relative weaknesses and strengths of an elevator. A "yes" answer to any of the following seven questions may indicate potential financial and management problems.

Does the buyer or warehouse manager...

1. consistently offer prices higher than other buyers in your area without a valid reason for doing so (some buyers or warehousemen may do this occasionally to increase their volume, increase cash flow and operating money, or to cover commitments already made for the grain)?
2. offer economic incentives not usually offered in the purchase of grain, such as little or no discount for high damage, dockage, or moisture?
3. have a history of slow payment, issuing bad checks, or recurring financial problems?



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4. ask you to hold a check for a few days before depositing it or until he or she receives payment for the grain?
5. urge you to leave your grain money on deposit, even promising interest?
6. give you an oral promise instead of a written contract?
7. try to persuade you not to ask for your stored grain; and does he or she want to pick up your receipt without paying for it?

Here are some things you can do to minimize your risk:

1. Know to whom you sell! Learn all about your buyer. Is it a well-established business? How well financed? Is it a "businesslike" operation? What is the condition of the warehouse and facilities? Can you reach your buyer at a place of business?
2. Demand accurate weights and grade. Settle for a fair price. Don't be greedy—the market will bear only so much. Don't ask a dealer to do something for you that you wouldn't want done for others.
3. Demand payment for sale grain when due—cash your checks promptly.
4. Don't risk crop after crop. Never let your contracts or moneys due extend beyond 1 year.
5. Request written documents for *all* transactions. Read thoroughly—if you don't understand, ask for clarification.
6. Understand the risks associated with delayed pricing (DP) and deferred crop payment contracts (DCPC). You are extending credit and you lose title to your grain. You do not have the same rights as storage depositors.
7. When there is any doubt about DP or DCPC or about getting paid, look for another buyer.

8. Obtain a scale ticket or warehouse receipt for grain placed in commercial storage. A scale ticket is nonnegotiable and therefore cannot be used as collateral for either a CCC or bank loan. A warehouse receipt must be obtained from the elevator if grain is to be used as loan collateral. Because warehouse receipts are negotiable financial instruments, they must be handled with care.

9. Do business only with a licensed and bonded warehouse. Laws require that warehouses meet certain standards and undergo periodic examinations. Most states require elevators that store grain for the public to be licensed and bonded either under state or Federal warehouse laws. Report dissatisfactions promptly. When in doubt, inquire.

10. If you sell grain to a buyer or warehouseman and agree to a deferred payment, you are extending credit to the buyer. Ask yourself if you would lend the buyer a like amount of cash without security.

11. If you belong to a cooperative elevator, exercise your rights and responsibilities as a member. Attend the co-op meetings; elect and support those directors capable of charting the sound business activities of the co-op. Raise questions to the manager and directors when you see signs of a problem.

### Summary

You cannot protect yourself completely from elevator bankruptcies, but you can minimize your risk of loss by following good business practices. Investigate the financial condition and reputation of the buyer before selling or storing your grain. Demand payment for sale grain. Get a warehouse receipt for storage grain. Enter into DP contracts only if you are willing to accept the risks that come with extending credit. The choice is yours.

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