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Abstract
Iowans who received payment for corn or other services from VeraSun within 90 days of the company’s filing for bankruptcy on Oct. 30, 2008 received preference demand letters at the end of August. The letters came from one of two New York law firms and demand that the supplier return a percent of the payments received from VeraSun during that 90-day period.

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VeraSun Corn Suppliers Must Respond to Preference Demand Letter by Sept. 30

By Kelvin Leibold, extension farm management specialist and Erin Herbold, Center for Agricultural Law and Taxation

Iowans who received payment for corn or other services from VeraSun within 90 days of the company’s filing for bankruptcy on Oct. 30, 2008 received preference demand letters at the end of August. The letters came from one of two New York law firms and demand that the supplier return a percent of the payments received from VeraSun during that 90-day period.

While the letters and the legal issues surrounding them may be confusing, the advice given by legal experts at a meeting in Charles City on Sept. 16 was simple. Suppliers must respond to the preference demand letters by Sept. 30, 2010; they must take action now.

Iowa State University Extension held the Charles City meeting and one in Fort Dodge a week earlier to help farmers better understand the legal issues and the required response associated with the letters. For the convenience of those unable to attend either of the meetings, ISU Extension videotaped the Charles City session. The video will be available to view on Monday, Sept. 20 as an additional resource on the ICM News homepage.

Steve Moline, of the Iowa Attorney General’s office, told those attending that letter recipients must keep three things in mind. “Do not ignore this matter. Seek advice of a bankruptcy expert before making any payment or offering to settle. And gather and copy all of your VeraSun transaction documents for your attorney so a response can be formed immediately,” Moline said.

Erin Herbold, staff attorney with the Center for Agricultural Law and Taxation (CALT) at Iowa State, outlined the suppliers’ legal options and discussed the defenses suppliers have. “Suppliers who did nothing wrong are being asked to provide information to the trustee to establish their defenses,” said Herbold. “Some will have strong defenses and the trustee may cease further inquiry; some suppliers will have partial defenses that may provide room for negotiation for a lower settlement; and some will have no defense.”

Herbold continued with explanations of the three traditional defenses, but to determine a supplier’s best defense, she referred back to Moline’s three points, “Gather documentation and get it to a bankruptcy lawyer immediately, there isn’t any time to waste,” she said.

Bankruptcy attorney Joe Peiffer, Cedar Rapids, provided a list of documents that suppliers should gather for their lawyers. Those documents include:
  • Copies of all documents and/or correspondence received from VeraSun regarding how and when it would pay for corn purchased from corn suppliers.
  • Copies of all scale tickets for corn sold to VeraSun at any time, not just the checks in question.
  • Copies of all settlement sheets for all corn sold to VeraSun at any time.
  • Copies of all contracts for sale of corn to VeraSun with delivery before Oct. 31, 2008.
  • Copies of all deposit tickets for checks received from VeraSun at any time.
• Copies of all checks deposited from VeraSun.

“These documents need to be provided to your bankruptcy attorney immediately so the attorney can draft a response to the preference demand letter by the Sept. 30 deadline,” Peiffer said. “Failure to respond to the preference demand letter could result in the supplier being sued in bankruptcy court in Delaware.”

View the full presentations made by Peiffer, Herbold and Moline, as well as their responses to audience questions from the ICM News homepage on Monday, Sept. 20.

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