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Nebraska's Written Contracts Rule

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CORNHUSKER ECONOMICS

Nebraska's Written Contracts Rule

Market Report	Yr Ago	4 Wks Ago	3/30/12
<u>Livestock and Products,</u>			
<u>Weekly Average</u>			
Nebraska Slaughter Steers, 35-65% Choice, Live Weight.	\$124.55	\$129.25	\$127.00
Nebraska Feeder Steers, Med. & Large Frame, 550-600 lb.	160.08	186.96	182.70
Nebraska Feeder Steers, Med. & Large Frame 750-800 lb.	138.37	169.96	154.88
Choice Boxed Beef, 600-750 lb. Carcass.	188.06	198.51	184.65
Western Corn Belt Base Hog Price Carcass, Negotiated.	88.22	86.92	80.44
Pork Carcass Cutout, 185 lb. Carcass, 51-52% Lean.	94.35	85.10	80.00
Slaughter Lambs, Ch. & Pr., Heavy, Wooled, South Dakota, Direct.	202.75	*	147.50
National Carcass Lamb Cutout, FOB.	397.50	374.35	374.54
<u>Crops,</u>			
<u>Daily Spot Prices</u>			
Wheat, No. 1, H.W. Imperial, bu.	7.60	6.36	6.20
Corn, No. 2, Yellow Nebraska City, bu.	7.12	*	6.37
Soybeans, No. 1, Yellow Nebraska City, bu.	13.69	*	13.64
Grain Sorghum, No. 2, Yellow Dorchester, cwt.	11.80	11.25	10.88
Oats, No. 2, Heavy Minneapolis, MN, bu.	3.75	3.35	3.71
<u>Feed</u>			
Alfalfa, Large Square Bales, Good to Premium, RFV 160-185 Northeast Nebraska, ton.	140.00	225.00	225.00
Alfalfa, Large Rounds, Good Platte Valley, ton.	72.50	145.00	145.00
Grass Hay, Large Rounds, Good Nebraska, ton.	*	100.00	97.50
Dried Distillers Grains, 10% Moisture, Nebraska Average.	213.50	215.25	215.00
Wet Distillers Grains, 65-70% Moisture, Nebraska Average.	75.50	75.50	77.50
*No Market			

Nebraska farmers and ranchers are used to doing business on a handshake. The culture is that if you ask someone to put the contract in writing, you are implying that you don't trust them to keep their word. Doing business on a handshake is fine so long as no one breaks their promise, or if everyone's recollection of what the deal is, is the same. But if one person wants out of the handshake deal the other person can be left holding the bag, even if they didn't do anything wrong.

The first written contract rule goes back over three centuries. In 1677 the British Parliament enacted the Statute of Frauds and Perjuries, now referred to simply as the Statute of Frauds. This early legislative enactment required certain business contracts to be in writing in order to be legally enforceable in court. The reason for the statute of frauds is that people would lie in court (i.e. commit perjury) about the terms of unwritten contracts when one party tried to get out of the contract. The plaintiff testifies "the contract was this," the defendant testifies "no the contract was that," and it was very difficult for the judge to determine who was lying and who was telling the truth. To avoid these kind of "he said-he said" lawsuits over unwritten contracts, the Statute of Frauds required specific types of contracts to be written or they could not be enforced in court. When the contract was written down, it made it much easier for the judge to enforce the terms of the contract if a dispute between the parties arose.

Nebraska has its own written contracts rules. Contracts that must be written in order to be legally enforceable in Nebraska courts include:

- Contracts for the sale of goods for \$500 or more (but not services);
- Real estate contracts;



- Leases for more than a year (but leases of one year, and year-to-year leases are both legal without a written lease);
- The promise of a bank to make a loan in the future; and
- Surety agreements—guaranteeing someone else’s contract performance (like loan co-signing).

If any of these types of contracts are not in writing, they cannot be enforced in court. So one person can violate the contract on purpose, knowing that the contract cannot be enforced in court – probably an unintended consequence of the written contract requirement.

Years ago, I got a call from a farmer/buyer whose neighbor/seller was backing out of a handshake deal to sell a bull. The seller got a better price somewhere else and did not honor the original handshake deal. The disappointed buyer wanted to know what his legal options were. “Was the contract to buy the bull for more than \$500?” I asked, knowing the answer would be yes. When the farmer said yes, the sale was for more than \$500, I explained the written contract rule to him, and that it would mean that it would be unlikely that he would be able to force the neighbor to sell the bull to him at the lower price, because their agreement had not been written down. The farmer commented that things had come to a sorry state when a man could get out of a promise so easily. And that is precisely the disadvantage to the written contract rule – if a contract is not written and cannot be enforced in court because of the statute of frauds, one of the parties can back out of it and not be held legally accountable – even if that is unethical.

There is one important legal exception to the Nebraska written contract rule, called the Merchant’s Exception. Under Nebraska law, an unwritten contract to sell grain is legally enforceable even if the contract amount is at least \$500, if the buyer (e.g. the grain elevator) sends the seller (e.g. the farmer) a written confirmation of the grain sale that includes:

- the kind of grain sold;
- the quantity;
- the unit price;
- the contract date;
- delivery date; and
- the statement that the contract is legally enforceable if the farmer does not object within ten days.

If the farmer/seller receives the written confirmation within a reasonable time of the original handshake deal, and does not object to the terms of the written confirmation within ten days of its receipt, the farmer/seller is bound to the terms of the written confirmation. So if the farmer does nothing, the written confirmation is a legally binding contract that can be legally enforced in court, even though the farmer hasn’t signed anything.

I don’t expect Nebraska farmers and ranchers to stop doing business on a handshake, even though that would be the most prudent thing to do. However, I do hope that readers of this newsletter now understand that if the other party decides not to honor the agreement, the innocent party to the contract may be left holding the bag and not be able to do anything about it.

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