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MIDSOUTH VIEWPOINTS

SPRING 2022

# LANDOWNER LIABILITY: ACTIVITIES ON THE LAND


In the summer 2021 newsletter, we had information covering landowner liability for persons on the land. The following overview focuses on land activities that can create liability for landowners. This information is provided by The National Agricultural Law Center. Visit their website at nationalaglawcenter.org for more information regarding liability and other legal matters important to agricultural landowners.

*Nuisance:* Liability for nuisance is based on the idea that activities on a landowner's property may not unreasonably interfere with the use and enjoyment of other people's property. A nuisance may be either private or public. In a private nuisance, only a small number of property owners are damaged in a discrete manner. In a public nuisance, the community's rights as a whole are damaged in a more general manner. Courts often use a cost-benefit analysis based on many factors in order to determine if the alleged interference with property rights was unreasonable. Landowners with production agricultural operations may become subject to nuisance actions if the effects of the operation excessively interfere with neighboring property owners' rights, especially if the region is becoming more urbanized. Right-to-farm statutes may afford some protections to farmers, but the outcome of these types of cases is often uncertain, even if the agricultural operation is conducted legally and according to acceptable management practices. If plaintiffs prevail, farmers may be forced to pay damages or even cease operations.

*Trespass:* Landowners may potentially be liable for trespass for activities on their land. A trespass occurs when there is an unpermitted physical invasion of another's land that interferes with their property rights. Trespasses may arise from agricultural lands in the form of ground water contamination, odors, dust, or wayward livestock.

*Environmental Regulation:* Landowners are potentially liable for actions that violate environmental regulations. These laws and regulations may be federal, state, or local and include such things as the Clean Water Act, the Clean Air Act, the Endangered Species Act, the Federal Insecticide, Fungicide, and Rodenticide Act, and the Comprehensive Environmental Response, Compensation, and Liability Act.

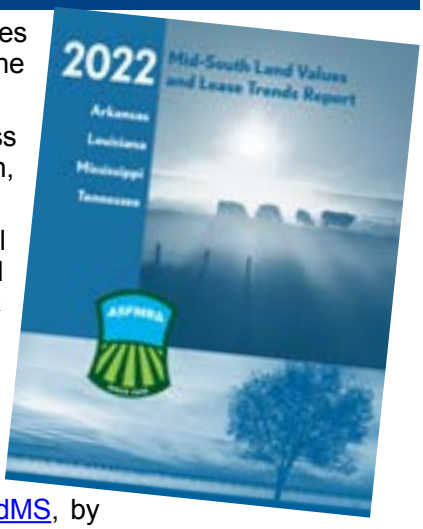
In addition to statutory environmental liabilities, potential landowner liability from environmental damage may arise in a situations where crops grown with different production methods are in close proximity to each other, and the production methods of one landowner cause damage to the neighbor. This may arise from pesticides drifting from nonorganic crop fields to organic crop fields causing damage from the loss of organic certification and a corresponding loss of value in the crop. It may also arise where genetically modified pollen drifts from a genetically modified crop into a nongenetically modified crop causing gene contamination and a loss in value of the crop. More information pertaining to environmental laws and their relationship to agriculture, can be found on The National Agricultural Law Center website under Biotechnology, Clean Water Act, Environmental Law, and Pesticides Reading Rooms.

*Other Potential Liabilities:* Landowners are potentially liable under a wide variety of circumstances. This overview describes the major areas for landowner liability, but other potential areas of liability exist including potential tax liabilities and liability associated with tenants.

Landownership requires the payment of taxes. In each state a certain amount of special treatment is given to agricultural landowners. Some of these statutes creating the preferential treatment for agricultural lands are intended to preserve the rural character of the land and, as a result, also contain rollback provisions. These provisions are designed to recapture some of the lost tax revenue if the agricultural lands are developed for nonagricultural uses.

Generally, landowners are not liable for the actions of their tenants. Some exceptions exist such as when landowners conceal dangerous conditions or if a landlord agrees to repair the land and fails to do so properly. Also, some statutes, such as CERCLA or provisions of the Farm Bill that create payment programs or environmental requirements, may impose liability on participating landowners under certain circumstances if they were aware and sanctioned the tenant's violations of the statutes. Bottom line, protect your assets with liability insurance and vigilance. If you or a trusted advisor is not looking after your property, risk of liability increases.

## 2022 MID-SOUTH LAND VALUES REPORT NOW AVAILABLE




Land values are holding steady according to the recently released Mid-South Land Values and Lease Trends Report, an 86-page assessment published by the Mid-South Chapter of the American Society of Farm Managers and Rural Appraisers.

“The report highlights recent upward trends with farmland values, sales, and rents across Arkansas, Louisiana, and Mississippi and parts of western Tennessee,” said Allen Swain, President of the Mid-South Chapter of the ASFMRA.

Additionally, the report contains editorials on mapping software, waterfowl habitats and feral hog management as well as the cattle, timber and poultry industries. While the values and trends for each evaluated region have unique characteristics and variables, the overall outlook for Mid-South land values is positive.

“The availability of good, top-quality investment grade farmland continues to be limited: this is a continuing trend over the past few years. Overall, farmland prices remain steady and, in many cases, have increased since the last publication,” said Tyler Mullins, ARA, Land Trends Publication Chair.

Copies of the report are $10 each and may be obtained by visiting asfmra.org/LandTrendMS, by downloading the ASFMRA mobile app at asfmra.org/app or by contacting a local land expert as listed on the ASFMRA online membership directory.

“Glaub Farm Management is pleased to be a founding supporter of this annual publication. The land book provides valuable information to Mid-South land owners. Too often we meet landowners, who are ill-informed, and this publication provides a base of knowledge before discussing a specific property with a land professional,” said Jeffrey Hignight, AFM..

Now in its fifth year, the land values report supports the chapter’s goal of serving as the premier information center for rural and farm landowners across the Mid-South. By providing an overall view of the Mid-South farmland market, the publication is a general source of information and is not intended to replace the knowledge and expertise of a qualified land professional, who should be consulted prior to making important decisions involving farm property.

Such professionals—farm managers, appraisers and consultants in the chapter’s four-state area—are listed in the report along with their contact information. Members with AFM, ARA, RPRA, and AAC after their names have earned designations through ASFMRA. To earn and maintain accreditation, ASFMRA members must achieve and demonstrate heightened levels of knowledge through testing, continuing education, practical field experience and ethical accountability within their designated disciplines.

## SOIL FERTLITY BY SAM KING


Typical agricultural production methods can have negative effects on the soil in which crops are grown and the surrounding environment. These concerns are something that Glaub Farm Management takes seriously and seeks to carefully steward the land we manage considering this. One way in which we can do this is by conducting regular soil tests. We have a partnership with an agriculture lab in Missouri that utilizes soil analysis methods which compare more than just selected nutrients and soil pH. We look for a broad range of macro and micronutrients as well as organic matter, Cation Exchange Capacity (CEC) and ratios of nutrients such as calcium and magnesium which can affect physical properties of the soil as well. Analyses such as these give us a broader context of how to address issues of soil compaction, nutrient availability, water storage capacity in the soil, and minimize soil runoff. Soil health is more than just managing nutrients and pH but includes management of soil microbiological life and the factors that impact their health as well.

Ted and Sam attended a meeting in Missouri with two consultants that we often use, Neal Kinsey and Damon Dowdy. At this meeting we discussed soil fertility and how to manage soil nutrients to create the optimal habitat in the soil for microbiological activity. Soil microbes help to decompose organic matter deposited by the crop residue or introduced from manures such as chicken litter and leave forms of these nutrients that are easily digestible and readily available for plants. By introducing organic matter, reducing tillage, and ensuring a healthy soil physical structure which provides water and air to feed soil microbes, we can naturally introduce a full range of macro and micronutrients that were not available before and provide them to plants in a sustainable method.

A proper balance of nutrients also has some effects on soil physical structure. Reducing soil compaction and allowing for more water infiltration increases the water storage capacity for the soil, which means we can store more rainfall in the soil and irrigate less often, while providing adequate oxygen for microbiological life.

Different nutrients such as calcium and clay particles bind together to resist soil structure breakdown. Thus, managing levels of calcium can decrease soil erosion. Phosphorus is a source of energy for the plant, while boron and copper are necessary for reproduction (creating the fruit). This information allows us to make informed decisions about tillage, land leveling, crop rotations, irrigation strategies, and cover crop planting to name a few. Our goal is not to just grow large plants, but to produce high, healthy yields while balancing input costs to the highest economic benefit while maintaining long-term soil health for future crops to benefit from.

## THE FUTURE OF NITROGEN FERTILIZER BY JEFFREY HIGNIGHT

Supply disruptions from Covid-19 and now instability caused by Russia's invasion into Ukraine will cause greater global food insecurity. The decline will result in fewer commodity exports from both Russia and Ukraine, which are the 1st and 5th largest wheat exporters, respectively which may domino to other countries banning food exports to shore up their supplies. The last food disruption was a catalyst for the Arab Spring beginning in 2010 which spread across many countries and caused major populous unrest.

The second disruption due to the invasion is natural gas supply and cost. Natural gas is a key ingredient used to create two nitrogen fertilizers, ammonia and urea. The Europeans are the largest exporters of nitrogen which rely on cheap Russian natural gas. Currently the cost of natural gas has skyrocketed and at the same time the Europeans are weening themselves off Russian fuel.

The current disruptions will most likely lead to unforeseen consequences around the globe. While this situation, we hope, is short term, the longer term issue is sustainability. According to the Institute for Productivity, the Haber-Bosch process uses 1% of global energy. This process, developed in the early 20th century, creates a majority of the nitrogen used in agricultural crop production. Scientist are working to make the Haber-Bosch process more efficient and develop a cost effective method to generate hydrogen without the use of fossil fuels. Solving the hydrogen puzzle could lead to a carbon neutral and green synthetic fertilizer.

Other scientists are approaching sustainable nitrogen through microbes, genetics and slow release fertilizer. Researchers at North Carolina State are rethinking fertilizer with use of microbes and plasma. The University is researching several microbes that can convert nitrogen in the air into ammonium. They are also working with plasma in waste water treatment and then using the nitrates in fertigation systems to send both water and nutrients directly to the roots. This system removes surface irrigation runoff which carries nitrates and phosphates into waterways. There are a few companies such as Pivot Bio and Kula Bio offering microbe products that can be applied on commercial operations. Currently the products are able to replace about 20% of synthetic nitrogen in corn but the goal of these companies is to fully replace synthetics.

Another interesting research avenue is developing crops which affix their own nitrogen. Legumes such as soybeans and peanuts create their own nitrogen. Plants such as rice, corn, wheat, and cotton need exogenous nitrogen sources. Scientist at UC Davis discovered tropical corn species that can fix atmospheric nitrogen. They found that the corn can produce about 30% to 80% of its life cycle needs. The corn does this by producing a gel like substance on the aerial roots stock. The gel is a host for bacteria that converts atmospheric nitrogen. Further research is being conducted to determine if this trait can be bred into commercial corn cultivars through traditional or newer breeding techniques.

A third approach to fertilizer is utilizing bio-base products and timed release products. Currently there are commercial companies providing products that are a replacement for synthetic fertilizer. One company, Anuvia, manufactures enhanced-efficiency fertilizer products that deliver slow-release nutrients without relying on polymers or chemically-based slow release technologies. This is done through a novel manufacturing process that creates a product that mimics organic matter in the soil.

The increased costs of nitrogen will create more interest in alternative fertilizers from both investors and producers. For the USA to continue its leadership position in agricultural production, more efficient processes for synthetic production, genetic exploration, and the new frontier of microbe utilization will all be required.

## VERBAL LEASE NOTIFICATION DATES

Many landowners still work with verbal leases. Although we do not recommend for numerous reasons, the main point of this article is to inform landowners of the verbal lease notification dates within our working area. If you are considering new lease terms for 2023 or intend to sell your property, it is highly advised to provide written and acknowledge notice to your tenant as required by your state. The following is our interpretation of state codes dealing with verbal lease termination notices. This information does not apply to a written agreement as the notice procedures would be described. Please visit with your legal counsel to discuss their interpretation of farmland verbal lease notices.

***Arkansas –AR Code § 18-16-105***, the owner of farmlands that are rented or leased under an oral rental or lease agreement may elect not to renew the oral rental or lease agreement for the following calendar year by giving written notice by certified mail to the renter or lessee on or before June 30 that the oral rental or lease agreement will not be renewed for the following calendar year.

***Mississippi –MS Code § 89-7-23 (2013),*** leases in Mississippi that do not expire at a fixed time require written notice to be given at least two months from the end of the year or lease term. Lease terms of a half year or quarter year must have at least one month's notice of termination, and lease terms lasting monthly or weekly must have one week's notice of termination.

***Missouri –MO Rev Stat § 441.050,*** states either party may terminate a tenancy from year to year by giving notice, in writing, of his intention to terminate the same, not less than sixty days next before the end of the year. For a month-to-month lease, at least 30 days' notice must be given. All forms of lease termination notice must be delivered in writing.

***Tennessee -*** Tennessee has no definitive law on termination notices for verbal agreements. The courts have ruled that a holdover tenant must be given at least six months notice prior to expiration of the lease term. Traditional agricultural lease years run from Jan. 1 to 31st. To be on the safe side, providing termination notice in writing on or before June 30 would be advised.

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## LAND INVESTMENTS: CURRENTLY AVAILABLE & RECENTLY SOLD

- 67 +/- Acres in Lee County, AR (Sold)
- 77 +/- Acres in Craighead County, AR (Sold)
- 80 +/- Acres in Craighead County, AR (Sold)
- 82 +/- Acres in Cleburne County, AR (Sold)
- 153 +/- Acres in Greene County, AR (Contract Pending)
- 160 +/- Acres in Lawrence County, AR (Sold)
- 168+/- Acres in Lee County, AR (Contract Pending)
- 316 +/- Acres in Phillips County, AR (Sold)

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**A large portion of sales occur on properties not listed or advertised on the open market. Contact us about these listed and additional land investments.**

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