

KANSAS FARM BUREAU LEGAL FOUNDATION

Force Majeure Questions and Answers

You may have heard recently that a major ethanol producer has claimed the COVID-19 pandemic is a force majeure event, excusing its nonperformance under certain contracts to buy grain. Some ethanol producers are reported to have temporarily halted production of ethanol, citing excess ethanol in storage because demand for gasoline has fallen during the COVID-19 pandemic. That development has caused some concern among growers and sellers of grain. While we have not heard of grain buyers in Kansas asserting force majeure, we have received some questions from producers about force majeure. Here are a few common questions and answers regarding force majeure for grain sellers.

Q: What is force majeure?

A: We can look to Black's Law Dictionary for this answer. Force majeure is French for "superior force." It is an event or effect that can be neither anticipated nor controlled, and it includes both acts of nature (e.g. floods, hurricanes, disease) and acts of people (e.g. riots, strikes, and wars). A force majeure clause in a contract allocates the risk of a contract if performance becomes impossible or impracticable as a result of force majeure, excusing nonperformance caused by force majeure.

Q: Can a contracting party claim force majeure based on COVID-19?

A: Probably yes. Courts have previously held that epidemics are force majeure events. As a general rule, however, force majeure can only be invoked if it is specifically provided for in a clause in the contract.

Q: What should a grain seller do if their buyer claims force majeure?

A: If a seller encounters a grain buyer asserting force majeure under a written contract, the seller should review their contract for a force majeure clause. Without a force majeure clause in the contract, it is unlikely that a buyer's claim of force majeure would be successful to excuse their nonperformance. If a grain seller has questions about their contract, or needs representation in a dispute with a buyer, they should seek counsel from a private attorney with experience in agricultural contracts.

Other COVID-19 Resources

Kansas Farm Bureau employees continue to work remotely to serve our members during the novel coronavirus pandemic. Our staff continues to be available to members by phone and email as normal. Additionally, we have developed legal resources and a COVID-19 resource page that can be found from our homepage at www.kfb.org.

April 2020