

Foreclosing on Agricultural Second Mortgages in a Split Financing Scenario

With cash corn prices hovering around \$3.50 per bushel and two straight years of deteriorating working capital across much of the Upper Midwest, many agricultural borrowers are hitting the wall in the 2025 growing season. In an effort to give producers one last lifeline, many operating lenders renewed working lines in spring 2025 only on the condition that borrowers pledge additional collateral—occasionally in the form of already encumbered agricultural real estate.

This practice has created a swelling wave of second mortgages on ag land, collateralized not only by the dirt but also by its highly valuable infrastructure: grain bins, silos, fuel tanks, seed sheds, and more. As these operations begin to unravel, operating lenders who took second positions on farmland are entering a distinctly complicated foreclosure landscape.

Not Your Average Second Mortgage: Fixtures vs. Personal Property

Unlike the vast majority of residential or commercial foreclosures, second-position foreclosures on ag land bring a unique complication: Are the structures personal property or fixtures? The answer determines who gets paid first.

If structures like grain bins are deemed fixtures, then the first mortgagee's rights extend to those assets, giving them first priority claim on the sale proceeds.



However, if they are classified as personal property, the second mortgagee—often an operating lender with a prior blanket UCC security interest—may jump the line in terms of recovery. And because the structures can constitute a significant portion of the total appraised value, the distinction is anything but academic.

The Four-Factor Fixture Test: Oberg as the Playbook

Minnesota courts addressed this precise issue in *Lighthouse Mgmt. v. Oberg Family Farms*, 966 N.W.2d 29 (Minn. Ct. App. 2021), where creditors disputed the status of a large grain bin. The Court held that whether such property constitutes a fixture or personal property must be decided on a case-by-case basis using a four-factor test:

1. Removability without damaging the real property.
2. Removability without breaking or damaging the item itself.
3. Whether the item has independent value when removed.
4. Intent of the parties regarding permanence.

These fact-intensive inquiries cannot be resolved at summary judgment and typically require full adjudication.



Strategic Guidance for Second Mortgages

Second mortgagees should proceed by action, not advertisement, and must affirmatively assert their claim to the structures as personal property in the foreclosure complaint. Many ag mortgages and appraisal reports include line-item breakdowns of structures (e.g., grain bins, dryers, tanks). These appraisals—available in discovery—are essential tools to:

- Segment the property's value,
- Argue that the appraised value of certain structures should be allocated to the lender under Article 9 of the UCC, not by virtue of the mortgage.

It is crucial that the foreclosure strategy aligns with the operating lender's UCC blanket lien position to maximize recovery.

Strategic Guidance for First Mortgages

First mortgagees cannot assume that their priority on the dirt will automatically extend to everything built on it. Proactive steps are needed to secure their interests:

- Have the borrower sign an acknowledgment that all structures are intended to be fixtures.
- Order an updated O&E report to monitor for any second mortgages granted to operating financiers.
- Consider updating loan documents to include fixture-specific language and borrower certifications in any split-financing situation.

Conclusion: Action, Not Assumption

Ag financiers on both sides of the capital stack must now contend with the increasingly gray area between soil and steel. With high-dollar bins and tanks often determining the economics of a foreclosure, lenders must be prepared to litigate fixture classification aggressively and early in the foreclosure process.

A second mortgage might be second in time, but with the right legal framing and strategic forethought, it is not always second in line for recovery.

— *Matthew J. Bialick, Esq.*

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Chapter 12 Bankruptcy as...a shrewd tax strategy for farmers and a boon to their lenders???

When an agricultural loan becomes distressed, a voluntary sale by the farmer can often produce a better outcome than foreclosure — delivering higher value for both the lender and the borrower.

But for many farmers, the capital gains taxes tied to decades of land appreciation can be a major barrier. In some cases, the tax hit from a voluntary sale is worse than the financial impact of foreclosure.

To help resolve this dilemma, Congress enacted Section 1232 under Chapter 12 of the Bankruptcy Code. This provision allows taxes from the sale of farm assets to be treated as general unsecured claims in a Chapter 12 bankruptcy.

Here's what that means in practice:

- Farmers can reorganize under Chapter 12 and propose a 3- to 5-year payment plan using disposable income.
- The IRS (and other unsecured creditors) receive a pro rata share, and any unpaid balances at the end of the plan are discharged.
- This creates a path for farmers to sell land without being crushed by taxes – and allows lenders to avoid costly and often lower-value foreclosures.

For ag lenders and agribusiness professionals, understanding Section 1232 is critical. It creates a more flexible framework to restructure distressed loans, support long-term farm viability, and preserve asset values.

For farmers, it's a powerful tool to exit or restructure with dignity and financial stability.

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Estate Planning for Farm Owners: What Bankers Should Know

As a banker serving the agricultural community, you're not just a lender—you're a trusted advisor. When your farm clients start talking about retirement, succession, or intergenerational transfer, a strong estate plan should be part of the conversation.

Here are the Top 3 Considerations you should keep in mind—and help guide clients toward the right professionals:

1. Succession Strategy Is Business Strategy

Farms are often family-run and asset-rich, but occasionally without a clear picture of which family member is best positioned to take over operations. Without a clear succession plan, operations can stall or even collapse after a generational transfer. Families often assume their intentions will be put into place, but a lack of specific and detailed estate planning leads to uncertainty and conflict. Encourage clients to start early and involve legal counsel who understands ag-specific issues.

2. Asset Structuring for Continuity

Land, equipment, and livestock are valuable but often illiquid. Estate plans that don't account for this can create cash flow problems or force asset sales. As a lender, you understand balance sheets—make sure the legal plan supports long-term viability.

3. Tax Efficiency and Lending Risk

Unplanned estates can trigger significant estate taxes or probate delays. These risks can affect loan repayment, collateral value, and farm solvency.

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Referring clients to estate attorneys with ag expertise protects both their legacy and your portfolio.

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You're in a unique position to spot the early signs that a client needs legal guidance—whether it's a major loan application, retirement discussion, or family transition.

Proactively recommending estate planning resources isn't just good relationship management—it's smart banking.

—James R. Magnuson, Esq.

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Beyond the Averages: Why 63% of Farms May Not Be Fine

My senior year of college, which is getting to be an alarming count of decades in the past, I finally got around to taking “Public Speaking,” a freshman-level course. As a college veteran impatient to wrap things up I had none of the trepidation that an introvert usually feels about public speaking. I always volunteered to go first and get it over with.

The others followed according to preset schedule, and what happened next was comic and given human nature, entirely predictable. Early in the order a student with a more, say, relaxed view of academic achievement wouldn't be ready. Next in line was suddenly in the frame, only they thought they were speaking tomorrow—not ready either. The rest fell like a row of dominoes, including students who otherwise wouldn't miss a deadline, ever.

There's an allegory in here somewhere.

“
Averages hide more than they reveal.
—most statisticians
”

FINBIN is a helpful database if you want to get a more granular look at the state of agriculture. One is still confined to averages, or at least, to data populations large enough to preserve the anonymity of individual farms.

It is possible, with any data group, to produce forecast scenarios testing variations in key inputs, especially, yields, crop prices, crop inputs, and rents. Thus far, we have found that on average (!), almost any way you slice FINPACK data (size, region, livestock, crops, etc.), working capital remains very positive and debt:assets low relative to 25-year history available through FINBIN.

After the unprecedented-in-recent-history profits 2020-2022, one would hope that ordinary cyclicity in agriculture would still leave farms with ample working capital and moderate debt-to-asset ratios. Indeed it has. Our own forecasts show that regardless of the persistent high costs matched with very bearish crop markets, farms on the balance should finish 2025 with still-strong balance sheets relative to history.

In a conversation with Matt Bialick a few weeks ago, we talked about the problems of averages and how in real life all the action happens at the fat tails [of the normal bell curve distribution]. It inspired me to slice the FINPACK data another way: by overall debt levels (sadly one can't easily parse it by liquidity).

I sorted for crop farms in MN from 194 & south, 1,500 acres and up, segregating those with <40% debt: assets from those with less. This filters out part-time crop enterprises and gives us a more homogenous group of operations.

Data sourced from FINBIN farm financial database

		MN farms > 1,500 acres, > 40% debt:assets		MN farms > 1,500 acres, < 40% debt:assets	
		Average 2000-2024	2024	Average 2000-2024	2024
Production Data & Analysis	Acres	2,485	2,690	2,317	2,483
	Owned	395	387	607	615
	Rented	2,090	2,303	1,710	1,868
	Corn Yield	179	182	183	186
	Corn Price	\$3.55	\$4.52	\$3.72	\$4.81
	Soybean Yield	49	51	50	53
	Soybean Price	\$8.93	\$11.39	\$9.15	\$12.20
	Gross revenue/acre	626	760	645	750
	Direct inputs/acre	225	322	224	336
	Rents/acre	180	267	159	253
	Value/owned acre	4,068	8,444	3,639	6,132
Financial Analysis	EBIT	279,804	(13,095)	345,501	(49,233)
	Net Income	183,497	(198,452)	299,406	(128,757)
	Net Worth (fmv)	2,109,468	3,898,749	4,395,589	7,486,821
	Cost of funds	5.91%	5.68%	5.01%	4.67%
	Working capital	429,517	506,551	1,200,934	1,710,748
	Days expenses in working capital	111	87	360	323
	Return on assets: cost	8.8%	-0.2%	8.9%	-0.6%
	Debt / Assets	45.22%	44%	20.03%	19%
Capex	Net Cash Provided by Operations	227,442	266,460	382,584	651,493
	Net Change, Property & Equipment	(277,888)	(416,285)	(337,626)	(527,084)
		(50,446)	(149,825)	44,958	124,409

By way of summary:

1. Rather more farms are “high” debt than low, 63% of our sample.
2. The high group averages (there’s that word again) 44%, the low, 19%. It’s worth noting that the trend is down for both classes (not shown in the reduced summary above).
3. Lower debt historically coincides with higher yields and better crop marketing performance.
4. Lower debt operations own more land (615 vs. 387 acres)
5. Lower debt operations are more liquid, 323 days’ expense in working capital vs. only 87.
6. Disturbingly, land valuations with high debt operations are 30% higher, \$8,444 vs. \$6,132, which too easily looks like window-dressing to shore up reported balance sheets and maintain status quo.

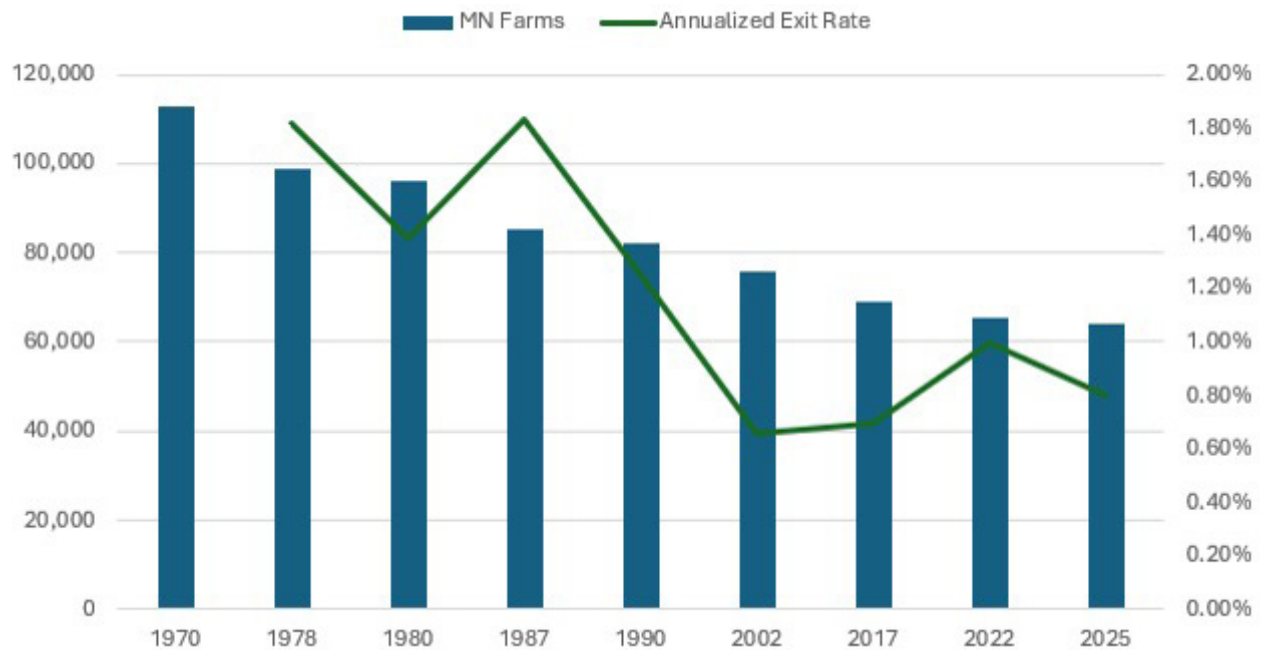
In the current environment, debt levels do not necessarily indicate poor performance, but they do indicate serious fragility. Current conditions might produce a loss for the low-debt operations this year, but they could be left with \$1.4 million in working capital, a slight reduction from 2024. The high debt operations opened with \$460,000 and closed with a slight deficit. With balance sheets under stress and (perhaps) the \$8k land valuation under scrutiny, their lenders might look askance at terming out short-term debt to restore working capital.

On average everyone's fine, but splitting into just two groups, the larger of the two is under significant stress.

There are enough dominos lined up where the weakest might knock into the stronger ones adjacent and send them falling where otherwise they might have stood.

I said there was an allegory in there.

A lot could happen between now and 2026 loan renewal, but even slightly peeling back the curtain we call "averages" as I've done here reveals significant stress. I don't propose that 63% of farms are likely to fail, even in the worst case. The last time we had major value reset, not coincidentally, concurrent with a USD crisis of lesser magnitude than the one now imminent, the stress looked like this:



The jump in exits in the 80s is unmistakable, but also, didn't even crack 2% annually and only just exceeded the background level of exits in the "boom" years of the 70s. And yet, land prices dropped by half or more and took 20 years to recover. A minority of small dominos can have a major impact.

History rhymes and doesn't repeat, as I've repeated myself too often. At the same time, since I'm resorted to cliches, this time is never different.

—Thomas Walker, Jr.

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