

## **The Law of Hard Times: What Lawyers and Policymakers in 2019 Can Learn from the Farm Crises of the 1980s**

### **Program Summary**

Severe debt problems put people in a corner with their back to the wall, cause them to deny the reality they are facing, or make them want to run away and hide. For many farmers, it is even worse. A farm failure can feel to the farmer like the negligent squandering of a legacy built over many generations. The resulting demoralization and hopelessness has caused farmer suicides to increase. What can you do for someone facing any of the above situations? How can you help them? Can you help them?

This program seeks to answer these and other questions, and is intended to jump start the learning curve that will be needed to provide legal and policy services to struggling farmers of today. Farm crises seem to occur every 50 years. This means that most law firms, State Departments of Agriculture, and other agriculture-related policy organizations will have no one on staff with real life experience working with farmers during hard times.

The first part of this seminar will share practical information from the bitter struggles of the 1980s. The first two speakers will be Roger Johnson and Sarah Vogel, both former North Dakota Commissioners of Agriculture. They will share lessons and legacies which have continuously evolved since the 1930s such as farm credit mediation, FmHA appeals, and Borrowers' Rights at the Farm Credit System to inform the audience on how to protect today's farmers.

Roger Johnson, a farmer himself, was a farm credit counselor in the mid-1980s. He was head of North Dakota's Farm Credit Counseling Service from 1989-1996, where he worked with thousands of struggling farmers. Johnson is now the President of the National Farmers Union and he will have up-to-the-minute information on the financial situation of farmers and the severity of farm stress.

Sarah Vogel is a long-time AALA member, who during 1983-1985 represented thousands of farmers in *Coleman v. Block*. *Coleman* was a national class action which stopped USDA from using unconstitutional "starve out" methods, and required USDA to provide due process in USDA hearings. She will talk about work that private lawyers, State Agriculture Departments, Attorneys General, and other policy organizations performed in the 1980s and the legacies of laws adopted during those years.

In 1986, Congress added Chapter 12 to the U.S. Bankruptcy Code. Chapter 12 is a debt restructuring remedy for family farmers and family fishermen. It offers the best relief available under the bankruptcy code and has been made more practical with two substantial revisions since its inception. The last of these revisions was enacted on August 23, 2019, when the debt limits for family farmers was increased to \$10 million, enabling many more family farmers to qualify for Chapter 12 relief.

Experienced bankruptcy attorneys, Brooke Schumm, III, Bud Stephen Tayman, and John Gabel will present the second part of the program, describing the relief available under Chapter 12. This part of the program will begin with an examination of the non-intuitive Chapter 12 qualification process. The focus will then shift to the extraordinary and often predictable ranges of remedies for those who qualify resulting from lien avoidance, use of cash collateral, capital gain tax benefits, and the discharge of indebtedness.

Procedures to reduce or completely eliminate liens will be particularly emphasized, whether they be regular liens or the types of specialized liens arising in agriculture and farm industries, as well as the use of cash collateral and adequate protection. Cash collateral is defined as cash or cash-type assets in which both the debtor and someone else have a property interest. Sometimes, the “someone else” is a third party other than the recognized secured lender. Moreover, there can be surprise junior liens and surprise senior liens. In regard to liens, the bankruptcy remedies of reducing, eliminating, and/or restructuring the payments thereof “level the playing field” to give the struggling farmer a fighting chance.

The ultimate goal of this program is to provide practitioners and policymakers with information, tools, and strategies for representing farmers going through financial hard times, which may make the difference between abandoning the farm and financial and personal survival.