

# Agricultural Law

The newsletter of the Illinois State Bar Association's Section on Agricultural Law

## Report From the Chair

BY GARRETT THALGOTT

### IT WAS GREAT TO SEE MANY OF

you at our annual in-person CLE event in Bloomington. Opportunities to network for practitioners like us are becoming increasingly rare, so thanks to all that made the effort to attend. For those that couldn't, I hope to see you next year. And many thanks to our CLE chair, Andrew White, the speakers, and the sponsors, without which the program could not continue.

Nearly every county in the state of Illinois is in some form of drought, ranging from "abnormally dry" in northeast and

southwest parts of the state to "extreme drought" in central and east central Illinois. Lincoln, in Logan County, received 0.08 inches of precipitation in February, marking the driest February on record and the fourth driest month since records were kept according to the National Weather Service.

The weather is, of course, unpredictable, and this spring could bring floods. But it seems more and more likely that those in agriculture will need our services to help them weather economic storms. ■

## Unique Statutory Liens in Agriculture for Uncertain Times

BY KYLE M. TOMPKINS

### AGRICULTURE IS RISKY BUSINESS.

Market conditions fluctuate regularly. The volatile political arena shapes and shifts trade policies. And no one can control the weather. Crop prices have been down recently, but, fortunately, high yields have kept farmers afloat for the most part throughout Illinois. However, an eventual bad growing season could cause significant financial strain on many. In Illinois, the law provides for several unique protections for agricultural stakeholders during difficult times through agricultural liens.

Under Section 102 of Article 9 of the Illinois Uniform Commercial Code (UCC), 810 ILCS 5/9-102, an "agricultural

lien" is defined as "an interest, other than a security interest, in farm products" created by statute, which secures an obligation for goods, services, or rent in favor of a person the person furnishing goods or services or leased real property, and is not dependent on the possession of personal property. Section 310 of Article 9 of the UCC, 810 ILCS 5/9-310, further requires a financing statement to be filed to perfect an agricultural lien unless perfected or provided otherwise under the UCC. Illinois law defines these specific agricultural liens under various statutory sections:

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## Unique Statutory Liens in Agriculture for Uncertain Times

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1. A Landlord Lien is a lien against crops grown or growing on leased land for the rent thereon and faithful performance of the terms of the lease, which is self-executing although notice must be given to good faith purchasers within six (6) months prior to the purchase to be effective. 735 ILCS 5/9-316;
2. An Agister's Lien is a lien against animals agistered, kept, yarded or fed for the proper charges due thereon. 770 ILCS 40/50;
3. A Threshermen's Lien is a lien against crops for services rendered during harvest, including, but not limited to, threshing, husking, bailing, and shelling, which is self-executing for eight (8) months although written notice must be given to the purchaser of the crops for it to be valid. 770 ILCS 40/50a; and
4. A Warehouseman's Lien is a lien against goods (usually grain) covered by a warehouse receipt or storage agreement, which is a possessory lien. 810 ILCS 5/7-209.

When taking a security interest in agricultural personal property (exclusive of statutory agricultural liens), it is of utmost importance to identify the assets that will serve as collateral and perfecting the security interest through filing a Form UCC-1 with the Illinois Secretary of State, as required for most non-real estate collateral. Careful attention must also be given to drafting a reasonably identifiable collateral description in the applicable instruments. The procedural aspects of securing such collateral must also be closely adhered.

Illinois law also provides special protections for purchasers of farm products under Section 1631 of the Food Security Act of 1985, 7 U.S.C. § 1631, even from known perfected security interests, unless direct notice of a security interest in the farm products is given to the purchaser within one (1) year prior to the purchase.

Illinois has adopted substantially identical provisions, 810 ILCS 5/9-320 & 9-320.1, but has adopted the “direct-notice” approach rather than the Central Filing System (C.F.S.) certified by the USDA.

Even though the law defines certain liens that may be applicable, it is also incumbent upon counsel to properly advise clients as to the priority of their potential liens when a conflict arises between creditors over the same assets. Section 322 of Article 9 of the UCC, 810 ILCS 5/9-322, governs priorities among conflicting security interests and agriculture liens against the same collateral. While the “first in time—first in line” rule and perfection typically controls, crops as collateral may lead to confusion as to which creditor may have priority. Specifically, if an agricultural lien is perfected, it will have priority over a security interest in the same collateral if provided by the governing statute. Section 334(i) of Article 9 further provides that a perfected security interest in crops growing on real estate has priority over a lien or interest in the real property unless otherwise contrary to an applicable statute, such as the landlord's lien.

However, Article 9 of the UCC concerning security interests does not apply to the extent it conflicts with the Illinois Grain Code, which provides for a statutory lien against grain assets in the event of a licensed grain dealer failure. 240 ILCS 40/20-10. In the event of a grain elevator failure, even with a perfected security interest in “company grain,” a creditor's right to payment will be subordinate to the Department of Agriculture's liquidation of grain and equity assets in order to compensate producers under the Grain Code unless in possession of collateral warehouse receipts.

Not every risk when dealing with borrowers can be effectively managed. Sometimes there are situations that are unavoidable that put a debt owed in jeopardy. However, there may also be remedies available to pursue when

## Agricultural Law

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To join a section, visit [www.isba.org/sections](http://www.isba.org/sections) or call 217-525-1760.

### OFFICE

ILLINOIS BAR CENTER  
424 S. SECOND STREET  
SPRINGFIELD, IL 62701  
PHONES: 217-525-1760 OR 800-252-8908  
WWW.ISBA.ORG

### EDITOR

Cari Brett Rincker

### COMMUNICATIONS MANAGER

Celeste Niemann  
✉ [cniemann@isba.org](mailto:cniemann@isba.org)

### ART DIRECTOR

Ticara Turley  
✉ [tturley@isba.org](mailto:tturley@isba.org)

### PUBLICATIONS ATTORNEY

Kelsey Burge  
✉ [kburge@isba.org](mailto:kburge@isba.org)

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The articles in this newsletter are not intended to be used and may not be relied on for penalty avoidance.

necessary. Distressed parties may become desperate, overextended, and reckless. In these situations, considerations must be given to any and all possible avenues of relief whether a debt is secured and perfected. Although not an exhaustive

analysis of all potential liens or legal issues that may arise when dealing with liens in agriculture, hopefully a refresher of certain available liens will aid the practitioner in issue spotting for their clients. ■

*Kyle M. Tompkins is a partner with Hasselberg Grebe Snodgrass Urban & Wentworth, practicing in the areas of estate and trust planning, agriculture, business, real estate, and insurance defense.*

SAVE THE DATE

2026  
Annual Meeting  
Illinois State Bar Association

June 11-12, 2026 | The Ritz-Carlton | St. Louis, Missouri

WELCOMING PERRY J. BROWDER AS THE 2026-27 ISBA PRESIDENT

Join us in the dynamic Clayton business district of St. Louis for our 2026 Annual Meeting. Indulge yourself in the luxurious amenities the Ritz-Carlton has to offer and explore beautiful downtown St. Louis! You won't want to miss this great opportunity to connect with fellow colleagues and attend our excellent lineup of programming.

*We hope to see you there!*

[isba.org/annual](https://isba.org/annual)

# Key Issues for Attorneys Reviewing Solar Leases in Illinois

BY EAN R. ALBERS

## MANY RURAL PRACTITIONERS

and agricultural attorneys routinely encounter solar leases as a result of sustained development interest across Illinois. These leases can bind property for 30 to 50 years or more and, although each transaction carries its own nuances, several recurring legal and economic considerations consistently require close scrutiny to protect landowners' interests.

A threshold issue is understanding the true duration and financial consequences of the agreement. Solar leases typically include an option period that often spans two to five years followed by construction, operations, and multiple renewal terms that can extend the total commitment to half a century. While annual rents generally exceed traditional cash rent or crop share arrangements, counsel must assess whether fixed or escalating payments adequately compensate for lost agricultural income and potential consequences under state and federal farm programs, such as the Conservation Reserve Program. Lease provisions addressing crop damage, soil compaction, and drainage tile disturbance, are equally significant. Clear damage formulas, repair obligations, and restoration standards help minimize disputes long after construction ends.

Solar leases in Illinois tend to operate as hybrid lease and easement instruments that grant developers expansive rights for access roads, underground and overhead electrical lines, vegetative management, fencing, and temporary laydown areas. These easements, if

drafted broadly, can permanently alter a farm's operational layout. Because solar facilities are frequently built on high quality agricultural land, construction impacts must be addressed in detail. Provisions concerning topsoil removal and replacement, compaction limits, erosion control, and post-construction restoration should be explicit rather than left to developer discretion.

Decommissioning, meaning what happens when the project reaches the end of its useful life, is one of the most consequential components of a solar lease. A well-crafted agreement should specify the full scope of required removals, including panels, electrical equipment, cabling, access roads, and concrete foundations; should establish soil and drainage restoration standards; should set definite deadlines for completing decommissioning; and should require robust financial security (*i.e.*, bonds, letters of credit, or escrow accounts).

In addition to local and zoning-based requirements (*e.g.*, 55 ILCS 5/5-12020 of the Counties Code), Illinois solar projects must comply with the *Agricultural Impact Mitigation Agreement* ("AIMA") required under the Renewable Energy Facilities Agricultural Impact Mitigation Act, 505 ILCS 147. The AIMA establishes statewide minimum standards for topsoil handling, compaction mitigation, drainage tile repair, construction traffic limitations, vegetative management, etc. Because the AIMA functions as a regulatory baseline rather than a comprehensive safeguard, attorneys should request that the project incorporate it, along with any enhanced

landowner protections, directly into the lease to ensure those obligations are privately enforceable. Further, landowners should not rely exclusively on the AIMA as unique facets of solar projects, such as battery energy storage, are not comprehensively outlined within the AIMA or current Illinois law.

Early involvement of counsel yields better outcomes for landowners. Coordinating with lenders, accountants, and tenant farmers; obtaining construction plans and tile maps; and evaluating long-term operational impacts, all help clients understand the costs and benefits of hosting solar facilities. Outside of maintaining a working knowledge of applicable law, counsel should be well-versed in market trends as well as up-to-date studies on solar project effects on property values, nuisance concerns, and competing technologies. Developers expect negotiation, and thoughtful revisions can meaningfully reduce risk for landowners committing their property to potentially many decades of solar development.

Altogether, solar projects remain an area of practice with extensive uncertainty and broad scope for real estate attorneys. This brief discussion is only a broad overview of potential areas of concern that attorneys should be mindful of when reviewing and advising clients. ■

*Ean R. Albers is an associate attorney with Hasselberg Grebe Snodgrass Urban & Wentworth, located in Peoria and Lacon, Illinois.*

*This article was originally published in Real Property (December 2025, Vol. 71, No. 6), the newsletter of ISBA's Real Estate Law Section.*

# Acquiring Battery and Energy Lease Expertise for Leasing and Real Estate Sales Agreements

BY ALAN E. STUMPF

**THIS ARTICLE BUILDS ON THE** article of Ean R. Albers, *Key Issues for Attorneys Reviewing Solar Leases in Illinois*, appearing in the December 2025 ISBA Real Estate Law Newsletter and republished in this newsletter.

Energy storage contract offers related to real estate are becoming more common, whether in the contexts of wind energy leases, solar energy leases or specific negotiations to lease or purchase real estate for battery storage. We need to be thinking about contract responsibilities and technology related to energy storage on real estate.

From a financial and estate planning perspective, we should think about who

succeeds to the management of the energy lease and what the active energy lease present value (and related discount rate to be selected) and estate tax value would be for the energy lease asset.

A current starting point for lawyers to gather information to assist clients should be the video and materials presented on February 6, 2026, at the 32nd Annual Agricultural Law Seminar, presented by the ISBA Agricultural Law Section, co-presented by the ISBA Energy, Utilities, Telecommunication & Transportation Section, ISBA Mineral Law Section, and ISBA Rural Practice Section. Also required reading is now the 1021-page Illinois Public Act 104-0458, effective January 1, 2026. This statute may have local government and energy project application unique to your clients' real estate location

or use. The CLE discussion also prepares us to know what to "ask for" in favorable energy lease terms for our clients.

The introduction to the energy discussions by Laura Harmon and Daniel Hamilton is set forth below:

## **Energy Issues Impacting Illinois Landowners**

"The materials included in this portion of the Energy Issues Impacting Illinois Landowners Agricultural Law panel presentation supplements the power point presentation prepared by the authors.

### **I. Statewide Renewable Energy Zoning Standards 55 ILCS 5/5-12020**

A. The Illinois General Assembly amended the Renewable Energy Facilities Act when it recently enacted the Clean and Reliable Grid

## 24th Annual Environmental and Natural Resources Law Conference

*Presented by the Illinois State Bar Association Environmental and Natural Resources Law Section, The Chicago Bar Association Environmental Law Committee, and The Chicago Bar Association Young Lawyers Environmental Committee*



**Thursday, May 21, 2026 – Friday, May 22, 2026**

**IIT Chicago-Kent College of Law, 565 W Adams Street, Chicago**

**Thursday: 9:00 a.m. – 5:30 p.m. (Complimentary networking reception to follow)**

**Friday: 9:00 a.m. – 1:15 p.m. (Complimentary Continental Breakfast served before)**

### **Program Coordinators:**

**Jane E. McBride**, Attorney at Law, Springfield

**Michael P. Murphy**, HeplerBroom LLC, Springfield



[isba.org/cle/upcoming](https://isba.org/cle/upcoming)

Affordability Act (“CRGA”). See: <https://www.ilga.gov/Legislation/PublicActs/View/104-0458>.

Counties that have adopted zoning may establish zoning for Battery Storage Systems which are not more restrictive than the newly enacted statewide standards. In addition to maximum setback requirements (150 feet from occupied community buildings and residences and 50 feet from those property lines) the amendments provide that a county must have at least one public hearing on a Battery Storage project which must conclude within 60 days after the filing of an application. Counties cannot set sound limitations which exceed those established by the Illinois Pollution Control Board. See, 55 ILCS 5/5-12024. The Act also requires a Battery Storage System owner to file a farm drainage plan with the county and impacted drainage districts, and repair all damage during construction or deconstruction, including crop loss. The counties may require the facility owner to file a decommissioning plan which requires financial assurance that is acceptable to the county. Finally, Battery Storage Systems will be assessed similarly to wind and solar farms under 35 ILCS 200/10-920 through 955.

B. The CRGA Act also amended the existing standards of the Renewable Energy Facilities Act for wind and solar facilities, to impose limits on special use permit application fees, and a developer has 5 years from the date of siting approval to obtain a building permit or start construction. The recent amendments update the vegetative screening requirements for

solar farms and clarifies that these do not apply to wind farms. See 35 ILCS 5/5-12020: <https://www.ilga.gov/Legislation/PublicActs/View/104-0458>.

C. The CRGA Act includes a dispute resolution process before the Illinois Commerce Commission for siting disputes between wind, solar or battery energy facilities owners and local government related to the siting of those facilities. Hearing process before the ICC requires a decision within 90 days after petition is filed. ICC may seek injunctive relief from a court of competent jurisdiction if it determines that there is substantial harm to the facility owner. ICC may also impose sanctions for frivolous claims or defenses....”

*You are encouraged to examine the online CLE materials which should be available from the ISBA CLE website in April 2026 which provide transactional tips from the speakers.*

Additional information about battery storage systems can be found in trade publications such as the February 2025, issue of Illinois Country Living (Illinois Association of Electric Cooperatives) which contained an article (page 14) about battery storage basics.

In evaluating solar lease agreements permitting battery storage systems (BESS) for a landowner, what are the reasonable battery storage expectations, if any, that are needed to allow transmission of the energy from the lease site to the solar interconnection line?

A solar lease drafting point of concern is to control BESS language in option and lease documents due to lack of credible risk control information and insurance underwriting clarity for the landowner.

What language do we need to look for

to see these expectations are reasonable?

What are the risks of batteries when the project is decommissioned?

What do local zoning ordinances say about battery storage?

What do Illinois statutes say about battery storage responsibilities, such as drainage, fire protection, environment and decommissioning?

What are the basics to cover for battery storage site leases?

What resources are there to assist understanding of the engineering involved in the “basic” or “advanced” solar panel sites?

What information is reasonable to request from the solar site developer?

Additional technical resources to be considered are set forth as follows.

U.S. Department of Energy Report, November 1, 2024: [https://www.energy.gov/sites/default/files/2025-01/BESSIE\\_supply-chain-battery-report\\_111124\\_OPENRELEASE\\_SJ\\_1.pdf](https://www.energy.gov/sites/default/files/2025-01/BESSIE_supply-chain-battery-report_111124_OPENRELEASE_SJ_1.pdf). The report does not provide much insight into science of materials, fire and environmental hazards needed to advise our clients. Future DOE leadership in the energy storage area needs to be understood and analyzed further.

January 17, 2025 Announcement: <https://www.energy.gov/ceser/articles/new-ceser-report-offers-supply-chain-mitigation-strategies-battery-storage-systems>.

For organizational insight, see the Department of Energy flowchart: [https://www.energy.gov/sites/default/files/2025-02/DOE%20Org%20Chart\\_%20energy\\_dot\\_gov%20v2.pdf](https://www.energy.gov/sites/default/files/2025-02/DOE%20Org%20Chart_%20energy_dot_gov%20v2.pdf).

A starting point for data and science information may be the Office of Critical and Emerging Technologies (OCET). ■

*Alan E. Stumpf is an attorney with Stumpf & Gutknecht, PC, located Columbia, Illinois.*

# CLE Chair Report

BY ANDREW G. WHITE

## THE 32ND ANNUAL AG LAW

**SEMINAR** was held on February 6, 2026, in Bloomington. Thank you to everyone who helped make this possible: our Section Council, speakers who graciously dedicated their time, and sponsors.

Attendance was good, and topics ranged from the use of Artificial Intelligence in the Practice of Law, current “hot topic” issues facing Illinois Farmers

and the Illinois Farm Bureau, Land Values and Leasing Trends, Financial Distress and Bankruptcy Issues, and Energy Issues Effecting Illinois Landowners.

Sponsorship from Farm Credit Illinois, Farmers National Group, the People’s Company, Rincker Law, and Handegan Law Office/First IL Title Group LLC helps us keep the program going and provide lunch for attendees.

Live and in-person programs provide so much value to those who attend.

Understandably, it is much easier to log on

and watch the pre-recorded program from your office. For those of you who do not regularly attend, I challenge you to make time to get out of the office, congregate with peers, make connections, and learn from experts in the field. It really is time well spent.

[View photos from the 32nd Annual Agricultural Law Seminar.](#) ■

*Andrew G. White is an attorney with Bellatti, Barton Cochran & White LLC, located in Springfield, IL. [www.bellatti-barton.com](http://www.bellatti-barton.com).*

## Member Appreciation & Recognition *Reception*

May 14, 2026 | The Morton Arboretum | Lisle, IL

### *Celebrate* Member Appreciation Month!

Join us on May 14 from 5:30-7:30 p.m. for our annual Member Appreciation and Recognition Reception. Congratulate the 2025-2026 ISBA Award recipients, connect with your ISBA friends and colleagues, and enjoy an evening of networking at the beautiful Morton Arboretum. The reception will feature hors d’oeuvres and complimentary beer and wine. We hope to see you there!

**A complete list of the award recipients will be included in the May issue of the Illinois Bar Journal and posted on the ISBA website.**

