

When “Time Is of the Essence” Really Matters in Agricultural Transactions

Why Missed Deadlines Can Determine the Fate of Farm and Ranch Deals

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Overview

In agricultural transactions, timing is often far more than a matter of convenience. Planting seasons, harvest schedules, financing deadlines, tax-year considerations, crop insurance requirements, government program eligibility, and succession-planning objectives can all turn a delayed closing or missed payment into a major financial problem.

That reality helps explain why lawyers frequently include the phrase “time is of the essence” in farm leases, land-sale contracts, installment agreements, input contracts, and other agricultural transactions. But many producers and landowners do not fully appreciate what the clause actually means—or the substantial legal consequences it can create.

What Does “Time Is of the Essence” Mean?

Under traditional contract law, courts often assume that exact timing is not automatically a material part of an agreement unless:

- The contract expressly states otherwise;
- The circumstances demonstrate that timing is critical; or
- One party later gives notice making strict compliance necessary.

Without a “time is of the essence” clause, courts may permit reasonable delays or substantial compliance if the delay does not materially prejudice the other party. Adding the clause changes that analysis dramatically. When a contract states that “time is of the essence,” deadlines become material contractual obligations. Failure to perform on time may constitute a material breach that allows the other party to:

- Terminate the contract,
- Refuse further performance,
- Retain earnest money,
- Accelerate obligations,
- Seek damages, or
- Pursue other remedies available under the agreement.

In short, the clause converts timing requirements from flexible expectations into strict legal obligations.



Why Timing Matters So Much in Agriculture

Agricultural transactions are uniquely sensitive to timing problems because farming operates within biological, seasonal, and market-driven constraints. A delay that might be insignificant in another business context can create substantial economic consequences in agriculture.

Land Sale Transactions

Suppose a buyer contracts to purchase farmland with the expectation of taking possession before spring planting. If the closing is delayed by several weeks, the buyer may:

- Miss planting windows,
- Lose rental opportunities,
- Disrupt financing arrangements, or
- Jeopardize government program participation.

Farm closings are frequently delayed by:

- Lender underwriting issues,
- Probate complications,
- Title defects,
- IRS lien releases,
- Survey disputes,
- Or delayed financing approvals through the Farm Service Agency.

Without a strict timing provision, courts are often reluctant to impose harsh forfeiture remedies when the delay causes little actual prejudice.

That principle appeared in *ADC Orange, Inc. v. Coyote Acres, Inc.*,¹ where a buyer made an interim payment approximately two weeks late in a real estate transaction. The seller attempted to terminate the contract and retain the down payment. The court refused to treat the late payment as a material breach because the agreement did not expressly make time “of the essence,” emphasizing that real estate contracts generally permit performance within a reasonable time absent clear contractual language.

Conversely, when agricultural contracts expressly state that time is of the essence, courts are far more likely to enforce strict deadlines. For example, in *Langer v. Bartholomay*,² the court enforced a contractual notice deadline because the parties expressly treated timing as essential. The court reiterated that where parties clearly make time essential, strict compliance is ordinarily required.

¹ 7 N.Y.3d 484, 857 N.E.2d 513 (N.Y. Ct. App. 2006) (holding that absent a clear “time is of the essence” provision, a delay in payment under a real estate contract did not automatically constitute a material breach justifying termination).

² 745 N.W.2d 649 (N.D. 2008) (enforcing strict compliance with a farm lease termination deadline in a dispute involving tenants’ production of sugar beets on leased farmland).

That principle can have enormous consequences in agricultural land transactions where delayed possession may mean the loss of an entire crop year.

Farm Leases

Agricultural leases frequently involve timing-sensitive obligations relating to:

- Rent payments,
- Crop-share settlements,
- Possession dates,
- Irrigation obligations,
- Livestock removal, or
- Notice of termination.

Consider a ranch lease requiring a tenant to remove cattle from pasture by a specific date so the owner can:

- Rotate grazing ground,
- Comply with conservation restrictions,
- Transition to another tenant,
- Or preserve forage for winter use.

If the lease includes a “time is of the essence” provision, even a relatively short delay in livestock removal may constitute default.

Likewise, delayed surrender of cropland may prevent:

- Tillage operations,
- Fertilizer applications,
- Spring planting,
- Or enrollment in conservation programs.

Because agricultural production follows biological and seasonal cycles, courts may view timing breaches more seriously in farming contexts than in ordinary commercial settings.

Installment Contracts and Contract-for-Deed Arrangements

Installment land contracts remain common in some settings, particularly in intra-family farm transitions.

These agreements often involve:

- Annual payment obligations,
- Balloon payments,
- Tax-sensitive deadlines, and
- Strict default provisions.



A “time is of the essence” clause can significantly strengthen the seller’s ability to declare default if payments are late - even by a relatively short period. That can create substantial risks for younger operators who are operating on tight margins and highly variable commodity prices.

But agricultural reality often differs from contractual language. Parents and retiring operators frequently accept late payments during:

- Drought years,
- Low commodity-price cycles,
- Livestock disease outbreaks,
- Or periods of unusually high input costs.

That creates a dangerous disconnect between the written contract and the parties’ actual conduct.

In *Alderman v. Davidson*,³ a seller repeatedly accepted late installment payments under a land-sale contract containing a time-is-of-the-essence clause. Litigation later arose over whether the seller had waived strict compliance through years of accepting delinquent performance. Similarly, in *Shirley v. Tolbert*,⁴ the court explained that repeated acceptance of late payments may waive strict enforcement of time-essential provisions unless the party seeking enforcement gives notice that strict compliance will again be required.

Those cases closely resemble many succession arrangements where family members operate informally for years—until death, divorce, disability, creditor pressure, or estate administration suddenly changes the dynamics.

Crop Input and Marketing Contracts

Timing also matters in:

- Seed and fertilizer delivery contracts,
- Grain marketing agreements,
- Livestock production contracts, and
- Custom farming arrangements.

A delay in seed delivery during planting season may prevent timely planting altogether. Delayed fertilizer application can materially reduce yields. Delayed delivery of feeder cattle may alter weight-gain schedules and market timing. Likewise, in volatile commodity markets, even brief delays may expose parties to substantial pricing differences. For example, a custom harvester who arrives two weeks late during a narrow harvest window may expose a producer to:

- Weather losses,
- Quality discounts,

³ 326 Ore. 508, 954 P.2d 779 (1998) (holding that repeated acceptance of late payments under a rural land installment contract waived strict enforcement of certain “time is of the essence” provisions).

⁴ 155 Ore. App. 443, 963 P.2d 117 (1998) (holding that sellers did not waive strict enforcement of a “time is of the essence” provision in a trust deed involving 79 acres of rural land despite acceptance of some late installment payments).

- Lodging damage,
- Or lost marketing opportunities.

For those reasons, timing provisions in agricultural production contracts often carry unusually significant economic consequences.

Courts Do Not Always Apply the Clause Automatically

Importantly, merely inserting the phrase “time is of the essence” into a contract does not guarantee automatic enforcement in every circumstance.

Courts still examine:

- The parties’ conduct,
- Waiver,
- Prior course of dealing,
- Equitable considerations, and
- Whether the parties themselves ignored strict deadlines during performance.

For example, if a seller repeatedly accepts late payments without objection, a court may conclude the seller waived strict enforcement despite the contractual language. Likewise, courts sometimes resist harsh forfeitures where:

- Delays are minor,
- Actual prejudice is limited,
- Or the breaching party substantially performed.

Still, the clause substantially strengthens the position of the party seeking strict compliance.

Special Concerns in Farm Succession Planning

The clause can become especially important in family farm succession planning. Many agricultural transitions involve:

- Installment purchases,
- Gradual transfers of machinery and livestock,
- Operating agreements among family members, and
- Multiyear land-transfer arrangements.

These transactions frequently operate informally, with family members relying on trust and longstanding relationships rather than strict legal enforcement. But when disputes later arise - especially after death, divorce, disability, financial stress, or remarriage - the existence of a “time is of the essence” clause may suddenly become critical.



A missed payment or delayed performance that was informally tolerated for years may later become the basis for litigation over:

- Default,
- Forfeiture,
- Ownership rights,
- Estate claims, or
- Partition disputes.

That is why succession planners should carefully evaluate whether strict timing provisions are truly necessary, whether cure periods should be included, whether notice requirements should precede default, and whether the family's actual expectations align with the contract language.

In many family operations, a carefully drafted cure provision may better reflect reality than rigid time-essential language.

Practical Drafting Considerations

For agricultural producers, landowners, and attorneys, several practical lessons emerge:

1) If You Want Strict Deadlines

- Include a clear "time is of the essence" clause;
- Specify exact dates and performance obligations;
- Define remedies for noncompliance;
- Require written modifications;
- And avoid conduct inconsistent with strict enforcement.

2) If Flexibility Is Desired

- Avoid unnecessary time-essential language;
- Include cure periods for missed payments or delayed performance;
- Clarify whether substantial compliance is acceptable;
- Document extensions or modifications in writing; and
- Consider requiring written notice before acceleration or forfeiture.

Agricultural contracts should also account for the realities of farming, including:

- Weather disruptions,
- Financing delays,
- Equipment breakdowns,
- Labor shortages,
- And volatile commodity conditions.



Conclusion

In agriculture, timing often drives economics. But parties sometimes include “time is of the essence” language reflexively without fully considering the consequences. The clause can significantly alter contractual rights, remedies, and litigation outcomes. In some cases, it provides valuable certainty. In others, it may create unnecessary rigidity and risk—particularly in family farm transactions where informal practices are common. As agricultural operations become larger, more capital intensive, and more legally complex, careful attention to contractual timing provisions is increasingly important.

Because in farm and ranch transactions, a missed deadline may be far more than a minor delay. It may determine who keeps the land, who bears the loss, and whether the deal survives at all.

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