

Overcoming Bad Seed: Legal Protections for Farmers and Seed Dealers

Contributing Editor Joel McKie
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With planting season in full gear, farmers and seed sellers alike are hopeful that the seeds being sold and planted will soon sprout and mature into a healthy crop. From time to time, however, the seeds planted in the Spring do not result in the healthy crop that both the seller and buyer expected. In recent years, seed claims have arose not only over germination problems, but over other allegations such as seeds being packaged with mixed maturation dates, crops that develop "J" root, or resulting vegetables that are adversely affected by fungus. While many of these issues are resolved by seed credits and re-plants, Georgia seed law has developed mechanisms which allow vendors and producers to resolve their disputes over non-conforming seed.

Back in the early 1990s, the Georgia General Assembly followed the lead of other states and statutorily-established the Georgia Seed Arbitration Council. The Georgia Seed Arbitration Council is made up of five (5) individuals appointed by various leaders in the seed and agricultural industries. When a buyer of seed has been damaged by the failure of any agricultural, flower, tree, shrub, or vegetable seed to conform to or perform as represented by a label or warranty, he or she has ten (10) days from the date the alleged defect became "apparent" to file a complaint with the Georgia Department of Agriculture so as to allow inspection of the alleged deficiencies. The filing of a complaint starts the arbitration process. The failure to file this complaint within ten (10) days with the Commissioner of Agriculture could result in an automatic dismissal of any subsequent civil suit. Therefore, once a seed purchaser believes he or she has a problem with non-conforming seed, it is imperative that the buyer promptly file the basic seed complaint that can be found on the Georgia Department of Agriculture website. It is important to note that when the notice of arbitration does not appear on the back of the seed bag or on the invoice covering bulk seed, the buyer no longer has to go through the arbitration process prior to filing suit. This exception to the arbitration complaint requirement is important for seed dealers who sell seed in bulk. Seed dealers who sell in bulk and would prefer to resolve disputes through the arbitration council should be certain to place the regulatory-prescribed arbitration notice on all invoices.

Once the complaint is filed, the Georgia Department of Agriculture assists the Seed Arbitration Council in its investigation of alleged non-conforming seed. A hearing is then held in front of the five person panel, after which findings and recommendations are transmitted to parties. Any award is non-binding, meaning either the vendor or the farmer-producer can reject the council's arbitration award. Notably, conclusions of the Seed Arbitration Council are not admissible into evidence in a subsequent trial of the case, but it is important to have legal counsel involved in this process so as to evaluate the legal basis of any award or denial of an award.

In addition to the arbitration requirement, a couple other unique aspects of Georgia seed law

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should be considered by those buying and selling seed. When a seed buyer looks at the back of any seed bag, he would likely find a limitations of warranties or limitations of remedies provision which indicate the farmer's claim for damages are limited to the cost of replacement seed. Georgia's Court of Appeals, and at least one federal court here in Georgia, has held these type provisions on seed bags are generally unconscionable and thus, unenforceable. In other words, a seed seller can generally recovery his lost profits to the extent he can prove his damages to a reasonable degree of certainty. Our courts have said that to meet this burden a farmer must compare yields from seed "grown in the same soil, planted under identical weather conditions, planted at the same time, and fertilized and cultivated in the same manner." Since that standard is a pretty substantial burden, a best practice for farmers and producers is to make detailed notes regarding when and under what conditions they planted all their crops.

At this early stage of the growing season, seed sellers and farmers do not anticipate a problem with the seed that they are selling or planting. However, when issues do arise, it is important to understand the laws that are developed here in Georgia that protect both the seed dealers and the farmers from the challenges that come from planting non-conforming seeds.

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