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CAUTIOUS CREDITOR®

AGRICULTURAL LIENS AND REVISED UCC ARTICLE 9

Recent issues of the *Cautious Creditor®* have addressed some of the important changes that Revised Article 9 of the Uniform Commercial Code (UCC) will bring to the area of secured transactions. Another significant change involves statutory agricultural liens. Under current law, agricultural and other statutory liens are not subject to the UCC's perfection, priority and enforcement rules. Revised Article 9 makes a major change by bringing agricultural liens within its scope. Other types of statutory liens are still excluded.

WHAT IS AN AGRICULTURAL LIEN?

Under Revised Article 9, an agricultural lien is a non-possessory statutory lien on a debtor's farm products to secure payment or performance of an obligation that the debtor incurred for goods or services furnished by a creditor in connection with the debtor's farming operations. Farm products include crops, livestock, products of crops or livestock in their unmanufactured states, and supplies used or produced in a farming operation. Crops and livestock include aquatic goods produced in aquacultural operations. Agricultural liens are not consensual liens and do not depend on possession to exist. Statutory liens that depend on the creditor's possession of farm products collateral remain outside the scope of Revised Article 9.

Many states provide statutory liens on farm products in favor of landlords and suppliers who furnish goods and services to farmers. Indiana has at least three lien statutes that fall within Revised Article 9's definition of an agricultural lien:

1. The landlord's lien on crops to be paid as rent (IC 32-7-1-18);
2. The blacksmith's lien for shoeing a horse or other animal (IC 32-8-21); and
3. The mechanized agricultural services lien (often called a thresher's lien) for the use of machines or tools used in the production or preparation of crops for market (IC 32-8-33).

Revised Article 9 draws a distinction between agricultural liens and consensual security interests in farm products. Agricultural liens arise by operation of law under the statute that creates the lien. Consensual security interests in farm products arise by agreement between the farmer and the secured creditor.

Some rules, like Revised Article 9's perfection rules, apply equally to agricultural liens and security interests. However other rules do not apply equally. For example, the priority rules for security interests apply to agricultural liens only if the statute that creates the agricultural lien does not grant priority. The treatment of proceeds is another example. Although Revised Article 9 governs security interests in proceeds of collateral, it does not determine whether a lien extends to proceeds of farm products encumbered by an agricultural lien.

PERFECTION, PRIORITY AND ENFORCEMENT OF AGRICULTURAL LIENS UNDER CURRENT LAW

Under current law it is not necessary to file a financing statement to perfect an agricultural lien. Each of Indiana's agricultural lien statutes requires the creditor to file a notice of its intention to hold the lien in the county recorder's office. For the landlord's lien on crops, it is the recorder's office of the county where the leased premises is located. For the blacksmith's lien, it is the recorder's office of the county where the animal's owner resides. For the thresher's lien, it is the recorder's office of the county where the work was done.

The landlord's lien statute and the blacksmith's lien statute address the lien's priority, but the thresher's lien statute does not. The blacksmith's lien statute and the thresher's lien statute provide for enforcement of the lien, but the landlord's lien statute does not.

Suppliers and landlords must comply with the applicable lien statute, while agricultural lenders must follow the UCC's rules governing security interests in farm products. Searches in multiple jurisdictions may be necessary to determine whether there are statutory liens on a lender's farm collateral. Disputes may arise if the lien statute does not clearly address priorities between the lien holder and other creditors. The lack of uniformity in requirements governing statutory liens creates uncertainty and risk for all agricultural creditors. Revised Article 9 attempts to eliminate many of these pitfalls.

Perfection, Priority and Enforcement of Agricultural Liens Under Revised Article 9

Under Revised Article 9, a financing statement must be filed to perfect an agricultural lien. In most states, the filing will be done in the state's central filing office after Revised Article 9 becomes law on July 1. Indiana's version of Revised Article 9 contains a temporary local filing exception. Before July 1, 2002, an agricultural lien creditor must file a financing statement in the recorder's office of the county of the debtor's location. On or after July 1, 2002, financing statements must be filed in the office of the Indiana Secretary of State to perfect agricultural liens.

When Revised Article 9 was enacted, none of Indiana's agricultural lien statutes were amended to remove the provisions requiring the creditor to file a notice of its intention to hold the lien in the county recorder's office. Arguably the more recent legislation requiring financing statements to perfect agricultural liens will preempt the recording requirements in the lien statutes.

In a departure from current UCC law, Revised Article 9 does not require a description of the real estate in a financing statement that is filed after July 1, 2001, to perfect a security interest in or agricultural lien on crops growing or to be grown.

With certain exceptions, Revised Article 9's priority rules and default provisions for security interests also apply to agricultural liens. One important exception is that if the statute that creates the agricultural lien also gives the lien priority, the lien will have priority over competing security interests in and agricultural liens on the same collateral, if the lien statute so provides and the lien is properly perfected.

As discussed in a prior issue of the *Cautious Creditor®*, Revised Article 9 contains a complex set of default rules and rules governing the enforcement of security interests. It provides parallel treatment for the enforcement of agricultural liens in most respects, but defers to the statute that creates an agricultural lien to determine when a default occurs and when the lien can be enforced.

Comment

Revised Article 9 brings agricultural liens under its scope, but does not displace lien statutes completely. Revised Article 9 governs the perfection of agricultural liens and, with a few exceptions, the priority and enforcement of agricultural liens. The creation and attachment of agricultural liens are still governed by the statute that creates the lien.

Under current law, holders of agricultural liens generally would have priority over lenders' security interests in farm collateral. Revised Article 9's perfection rules for agricultural liens will have the effect of shifting priority to the agricultural lender in many cases. Suppliers typically file after they have done some work, which likely will be after the lender already has filed.

For more information in this area, please contact Peggy J. Naile at (317) 236-2475, Internet: *naile@icemiller.com*.

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