

NEBRASKA'S STATUTORY AG LIENS

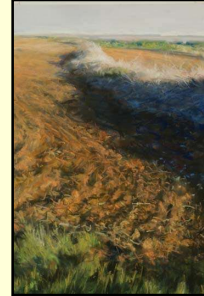


Farm & Ranch Project: Legal Aid of Nebraska
National Center for Risk Management Education

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Need For Personal Legal Advice

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PART I Background Terms



Terms

- Lien
 - A legal interest or right in property
 - A remedy if a debt is unpaid
- Collateral
 - Property that is subject to a lien
 - Collateral secures payment of a debt, obligation or claim

Terms

- Debtor
 - Owner of property subject to lien
- Secured party
 - The person who has a lien
- Obligor
 - Person who owes obligation to pay for goods or services

Terms

- Secured and Unsecured claims
 - Secured: payment of a claim is secured by the creditor's interest in [debtor's] property
 - Unsecured: there is no property securing payment of the claim
 - Only the personal liability of debtor
 - In lean times, liens are important

Terms

- Statutory lien
 - No need for debtor's consent; arises out of relationship of parties
- Consensual lien
 - Security interest: requires debtor's consent, e.g. security agreement
- Judicial lien
 - Judgment on a debt can become a lien on property of "judgment debtor"

Warning

- We are covering statutory agricultural liens.
- We are not covering security interests.
- BUT there is overlap: Ag Liens included in scope of Article 9 of Uniform Commercial Code for *perfection and enforcement*

Terms

- Attachment (creation of the lien)
 - When a lien "attaches" to property
 - The property becomes subject to the lien
 - Lienholder can *enforce* the lien (*realize* on the collateral)
 - Against the debtor

Terms

- Perfection
 - How a lien becomes enforceable not only against debtor, but against
 - other creditors who have claims against collateral, and
 - transferees/buyers of collateral
 - Perfection protects lienholder against these other parties
 - Perfection determines priority

Terms

- Priority
 - Between perfected liens: "First in time, first in right."
 - Perfected has priority over unperfected
 - As between unperfected liens, first to attach (become effective) has priority

Terms

- Priority
 - Sometimes first-in-time does not trump, e.g.
 - purchase money security interests
 - dealer financing for equipment
 - possessory liens
 - mechanic's lien

Terms

- Perfection
 - How does perfection of Ag Liens happen?
 - In general through filing a “financing statement” with the Nebraska Secretary of State
 - Or in state where collateral is located
 - For some liens there is no attachment without filing

Terms

- UCC Financing Statement
 - Required to perfect Ag Lien
 - Forms available online
 - UCC Financing Statement, and
 - Attachment to UCC Financing Statement for Ag Liens

http://www.sos.ne.gov/business/ucc/ra9_forms.html

Terms

- Financing Statement typically requires
 - Identifying information on lienholder
 - Identifying information for debtor
 - Description of service/work/product furnished
 - Amount due
 - Sometimes description of property where product/service/work furnished

Terms

- Enforcement
 - Ag Liens enforced under Art. 9
 - Enforcement typically triggered by default on obligation
 - Default is defined by Ag Lien statute not by Article 9
 - Enforcement can be through Art. 9 process or through available judicial procedure (e.g. replevin)

Terms

- Enforcement
 - Secured party may take possession and sell collateral
 - private or public sale
 - commercially reasonable standard
 - predisposition notice to debtor/obligor
 - in some cases, retain collateral in full satisfaction of debt, if parties agree
 - There are safeguards that need to be followed

Terms

- Termination
 - Statutory liens in general require that the financing statement be terminated once obligation is satisfied
 - Filing a Financing Statement Amendment which indicates termination
 - Form is available on Secretary of State website

http://www.sos.ne.gov/business/ucc/ra9_forms.html

Terms

- Conversion
 - It is a tort, legally - an injury to property
 - Exercising dominion and control over collateral inconsistent with rights of secured party
 - If secured lender does not authorize sale of collateral and is not repaid, can sue buyer for conversion

Terms

- Conversion
 - Conversion can be an action against a buyer of collateral or against the debtor/owner of collateral
 - i.e. If secured lender does not authorize sale of collateral and is not repaid by debtor, can sometimes sue buyer for conversion to recover value

Terms

- Conversion may also be criminal
 - Neb.Rev.Stat. 69-109
 - Selling property without consent of lienholder can be a felony
 - It can also be grounds for denial of discharge in bankruptcy
 - There are federal penalties where USG involved

Food Security Act and Double Jeopardy

- Background: under UCC, a general rule that buyers of products in the ordinary course of business *take free* of a security interest in the product, even if BIOC knows of security interest
- Exception to this rule for farm products – the BIOC of farm products did *not* take free of security interest: The “farm products” rule.

Food Security Act

- BIOC: “a person who, in the ordinary course of business, buys farm products from a person engaged in farming operations who is in the business of selling farm products”
 - This is not a mere junior lienholder or a creditor of the farmer

Food Security Act

- Under *farm products rule*, a secured lender who did not authorize sale of collateral could sue BIOC in conversion if collateral sold and lender not repaid
- This required BIOC to pay twice for same thing
- Also known as “double jeopardy”

Food Security Act

- The 1985 Farm Bill (Food Security Act, 7 USC 1631) changed the farm products rule: it allowed BIOC of farm products to take free of security interest
 - Response to the harshness of double jeopardy – inhibits free commerce
- FSA said BIOC of farm products takes free even if security interest perfected and BIOC knows about security interest
 - So, undoes farm products rule

Food Security Act

- **UNLESS**
 - The farm product is produced in a state that establishes a “central filing system” and
 - The secured party has filed an “effective financing statement” (EFS) in that system
- Nebraska has a federally approved central filing system
 - Neb.Rev.Stat. 52-1301 et seq
 - Secretary of State administers

Food Security Act

- So, a secured party may protect its security interest in farm products from being sold out from under the security interest by filing EFS in central system
- BIOC may protect itself from double jeopardy by consulting the central filing system and
 - obtaining release from secured lender, or
 - making out check to farmer and lender

Food Security Act

- FSA does not replace UCC
 - Attachment, perfection, priority, etc. still governed by UCC
- Secured parties are advised to file both a UCC financing statement (for perfection and priority) and an effective financing statement (to preserve security interest on sale of farm product to BIOC)

PART II Nebraska's Agricultural Liens



Agricultural Lien

- An interest (other than a security interest) in farm products
- Which secures payment or performance of an obligation for
 - goods or services furnished for farming operation, or
 - rent on real property leased for farming operation

Agricultural Lien

- Which is created by statute in favor of a person that
 - In ordinary course of business furnished goods or services to a debtor for debtor's farming operation, or
 - Leased real property to a debtor for farming operation
- Whose effectiveness does not depend on person's possession of the personal property

Agricultural Liens

Neb Rev Stat. Chapter 52

- Artisan's lien (201)
- Thresher's lien (501)
- Veterinarian's lien (701)
- Petroleum Products lien (901)
- Fertilizer & Ag Chemical Lien (1101)
- Seed or Electrical Power & Energy Liens (1201)
- Stallion, Jack or Bull (1501)

Agricultural Liens

Neb Rev Stat. Chapter 54

- Agister's Lien (201)
- Feed Lien (208)

Agister's Lien

- Agister: takes care of livestock
 - Custom cattle care
 - "taking in" cattle
- It's a Bailment
 - Agister (bailee) obligated to tend to livestock
 - As ordinarily prudent person
 - Would tend to his own livestock
 - Under similar circumstances

Agister's Lien

- Agister entitled to lien on livestock
 - For the feed and care furnished
- Agister can hold livestock until paid
- To perfect the lien agister must file financing statement before livestock leave his or her possession

Agister's Lien

- Lien has priority if prior lienholders have agreed in writing to the contract for feed and care
- If agister is Nebraska resident and owner is non-resident, agister's lien takes priority, without requirement of consent
 - Again, file before livestock leave

Feed Lien

- Person who delivers feed or feed ingredient
- For any kind of livestock
- Has a lien on the livestock for agreed price and costs of delivery
 - Or for reasonable value of feed if no agreement on price

Feed Lien

- Lien has priority if prior lienholders have agreed in writing to the contract for feed and care
- Lien attaches as of date of filing
- Lien enforceable only against contracting party
- Time for filing not specified
 - Sooner the better

Fertilizer & Ag Chemical Lien

- Any person who furnishes
 - Fertilizer, soil conditioner or ag chemical,
 - M&E for its application, or
 - Work or labor to apply products
- Shall have a lien
 - For agreed charges, or, if no agreement,
 - For reasonable charges & costs

Fertilizer & Ag Chemical Lien

- Lien is on
 - Crops produced within one year on land where product, M&E, or labor applied
 - Proceeds from sale of crops
 - On livestock and proceeds of livestock if crops have been fed
 - in such way as identity of crop has been lost

Fertilizer & Ag Chemical Lien

- Lien is created when products, labor or M&E supplied
- Lien attaches when filed
- Priority
 - over subsequent lienholders only if lien filed within 60 days after last date product, M&E or labor supplied
 - No priority over prior liens unless agreed by prior lienholder

Seed & Electric Power Liens

- Any person who furnishes
 - Seed to be sown or planted, or
 - Electrical power or energy used in production of crops
- Shall have a lien
 - To secure payment of purchase price of seed, or
 - Cost of electrical power or energy

Seed & Electric Power Liens

- Lien is on
 - Crops produced from the seed, or
 - Crops produced with the electrical power or energy provided
- Lien attaches on date of filing

Seed & Electric Power Liens

- To perfect lien
 - It must be filed within 60 days after
 - Seed was furnished
 - Meter was read for power/energy used
- Priority
 - Date & time of filing
 - No priority over prior attached & perfected liens except by agreement

Thresher's Lien

- Lien is for owner or operator of
 - thresher, combiner, cornsheller, mechanical cornpicker or cornhusker
- Lien is on “grain, seed or corn” that was harvested or processed by owner or operator using the machine

Thresher's Lien

- For agreed charges or, if no agreement, reasonable charges
 - Lien shifts to purchase price if grain etc. is sold
 - Owner of grain is required to inform buyer of unpaid bill
- Lien is perfected by filing
 - Must be filed within 30 days after work done

Thresher's Lien

- Enforcement must be commenced within 30 days after filing lien
- Lien does not attach to grain in hands of innocent purchaser or dealer unless notices given
- Lien not “apply” to landlord or lessor's share of crop

Veterinarian's Lien

- For services by “licensed” vets
- A “first, paramount and prior lien” on treated livestock
 - yet “treated in all respects as Ag Lien”
 - No cases
- Perfection – file within 90 days of providing services or medicines

Petroleum Products Lien

- Person who furnishes gas, diesel fuel, tractor fuel, oil, grease or other petroleum products
- Entitled to lien on all crops produced and owned by person to whom products furnished
 - Cattle not included in “crops”
- For purchase price

Petroleum Products Lien

- Attaches and perfected by filing
 - Within 6 months of furnishing fuel, etc.
- Lien shifts to purchase price if crop sold
 - If crop sold within 6 months with knowledge of lienholder no lien attaches to crop or proceeds unless notice given

Artisan’s Lien

- Commonly called *mechanics lien*
 - Also, in Nebraska, covers shoeing of horse or mule
- Anyone who
 - “makes, alters, repairs or enhances value of”
 - Vehicle, machinery, farm implement, or tool
- Has lien on that item

Artisan’s Lien

- Lien is valid if artisan is in possession of the item worked on
- Artisan has right to retain possession until paid
 - No right to add other charges, e.g. storage, until a written notice is sent with statement of additional fees
- Possessory lien is superior to perfected security interest

Artisan’s Lien

- Lien is also valid if artisan is not in possession of the item
- Lien is perfected by filing a financing statement within 60 days of work or material
- Lien, once recorded, takes priority over subsequent liens or purchasers

Stallion, Jack or Bull Lien

- Owner, lessee, agent , manager
- Of stallion, jack or bull
- Gets lien on mare & colt, cow & calf
- Served by stallion jack or bull
- For reasonable or agreed value/price of service

Stallion, Jack or Bull Lien

- Lien valid for 12 months from birth of offspring
- If not foreclosed within that time period, becomes unenforceable
- File notice of lien with county
 - Name animals and owner
 - Can file a master list of animals served, each year by October 1

Agricultural Production Input Lien

- Neb Rev Stat 52-1401 et seq
- Agricultural Production Input Lien
- This requires consent, i.e. signature of farm debtor
- A mechanism to allow furnisher of inputs to take priority over a perfected lender

Agricultural Production Input Lien

- Basically covers all ag production inputs
 - Chemical, feed, seed, petroleum product, electricity,
 - labor involved in planting, harvesting, storing, etc
 - Feeding, producing or delivering livestock

Agricultural Production Input Lien

- Input supplier sends notice of lien to lender
 - Marked “Important – Legal Notice”
 - Notice is form provided by secretary of state
 - Includes details & signature of person receiving input

Agricultural Production Input Lien

- Lender has options
 - Within 15 days
 - Lender responds with commitment for part or all of amount in notice, or
 - A written refusal to issue commitment
- Commitment by lender means no lien for amount stated in commitment
- If written refusal, nothing changes

Agricultural Production Input Lien

- If lender fails to respond within 15 calendar days after receiving notice
- Input supplier acquires priority lien
 - Priority of perfected security interest of lender
- Lien is perfected by filing
 - Within 3 months after last input supplied

Agricultural Production Input Lien

- Enforcement of lien may be brought in district court where crop or livestock located
- Lien is extinguished if enforcement action not brought within 18 months after filing lien notification statement

Resources 800-464-0258

- Legal Aid of Nebraska Beginning Farmer and Rancher Development Program
- Business, Succession & Estate Workshops
- Nebraska Farm & Ranch One-on-One Clinics (Nebraska Department of Ag)
- Nebraska Depart of Ag: NExtGen

Material



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