



# SIMMONS PERRINE MOYER BERGMAN PLC

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## Iowa Agricultural Mortgage Foreclosure and Related Issues

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# Today's Presenters:



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# Iowa Agricultural Mortgage Foreclosure and Related Issues



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# Ag. Loan Review

## Update loan file:

- Financial Statements
- Tax Returns
- Cash Flow – Identify income generating assets

## Loan document review:

- Security Agreement collateral description
- Legal descriptions on Mortgages
- Security Agreement and Mortgage cross-collateralization
- UCC and Record Mortgage Priority
- Future Advance clauses and limitations
- Homestead statutory language
- Entity Names and Guarantees



# Ag. Loan Review

## Consider Farm Debtor Options:

- Cash flow and profitability
  - Terminating over-priced leases
  - Marketing grain
  - Liquidating performing assets limits new finance potential
- New farm financing
  - Total take-out
  - Operating take-out
  - Term debt potential
- Voluntary Liquidation
  - Non-judicial foreclosure
  - Deed in lieu
  - Value of time
  - Cost savings



# Ag. Loan Review

## Consider Farm Debtor Options:

- Forced Liquidation
  - Foreclosure
  - Foreclosure Receiver & Debtor option to rent
  - Automatically delayed Sheriff's sale
  - Redemption and right of first refusal on sale out of REO
  - Counterclaims and defenses
- Bankruptcy
  - Chapter 11
  - Chapter 12 – cash flow and liquidation analysis
  - Chapter 7
  - A combination of bankruptcies?

## Tax Consequences of Liquidation:

- Inability to defer grain income
- Capital gains and depreciation recapture



# Mandatory Mediation

Mediation release is a requirement to access Courts

- Debtor “actively engaged in farming”
- \$20,000 or more owed

Mediation request to Iowa Mediation Service

- <http://www.iowamediationservice.com/forms/>

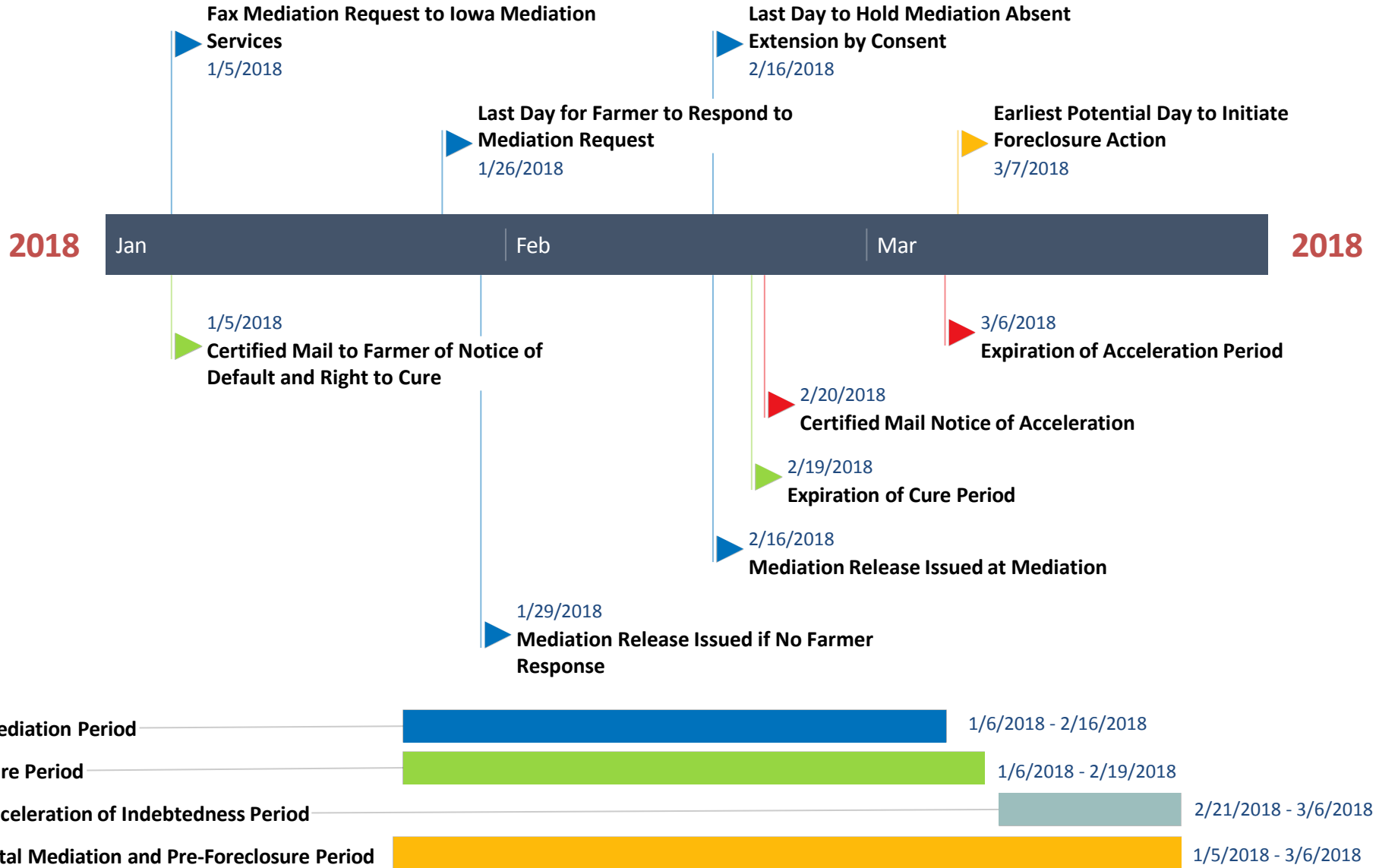
Mediation held within 42 days after request, unless extended by consent.

Mediation participation:

- Attendance and non-negotiable position okay
- “The statute does not give the mediation service the power to compel either creditor or debtor to negotiate. It merely attempts to set up conditions in which the parties might find a solution to their problems short of forfeiture or foreclosure.” *Graham v. Baker*, 447 N.W.2d 397, 401 (Iowa 1989).



# Mandatory Mediation Timeline



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# Ag. Land Foreclosure

When negotiations and voluntary surrender break down.

Foreclosure:

- Appointment of receiver under mortgage(s)
- Lengthy process

Replevin:

- Any problems with identifying collateral
- Locating collateral
- Logistics of repossession
- Willingness to post bond for immediate possession
- Force a Debtor into ill-timed bankruptcy



Deficiency Issues:

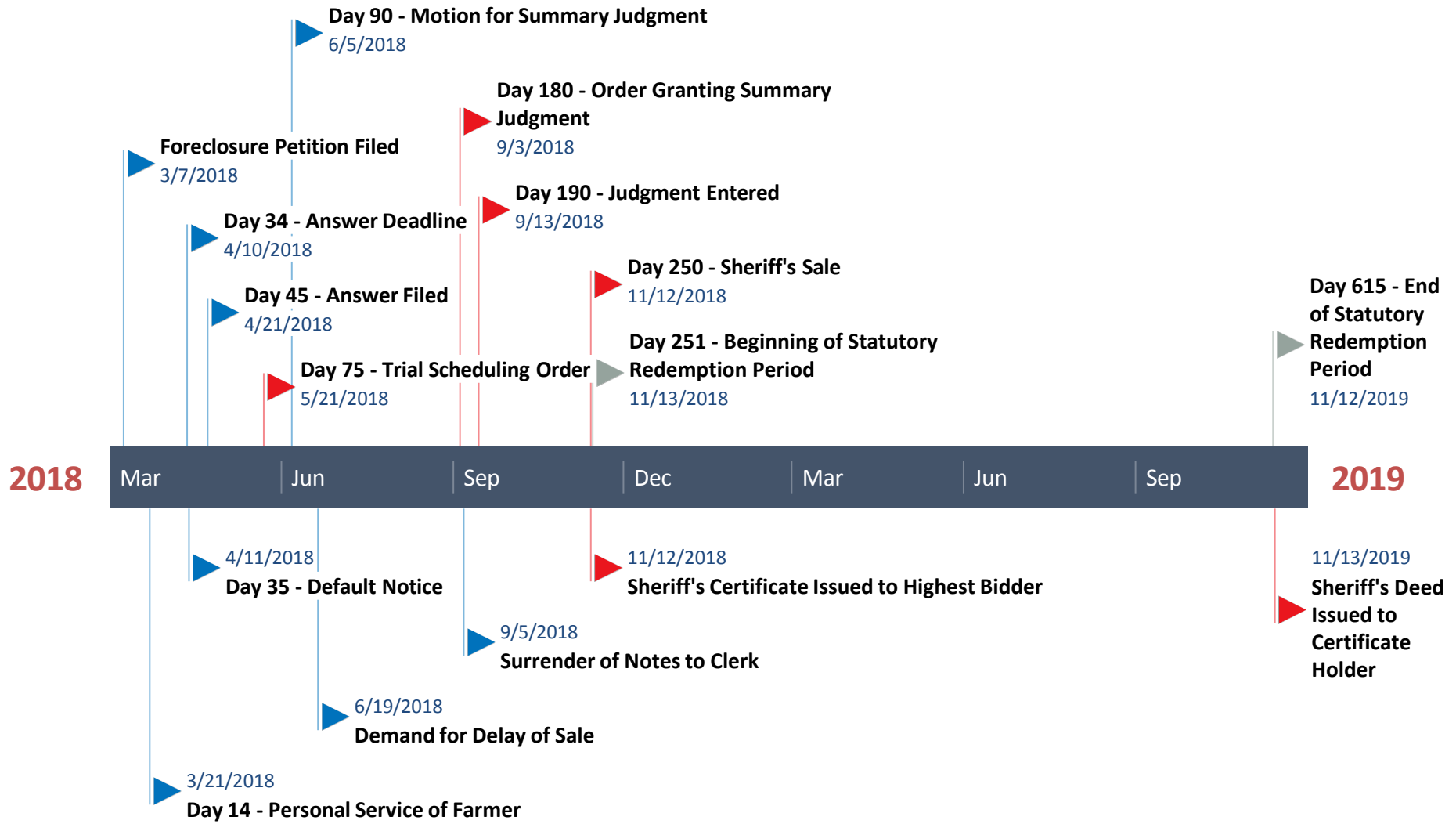
- Attachment – Any concerns about the transfer or destruction of non-pledged & non-exempt assets



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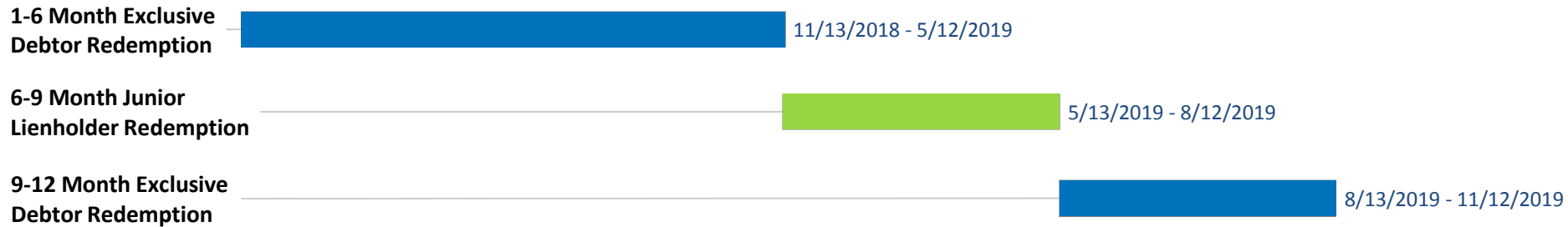
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# Ag. Land Foreclosure Timeline

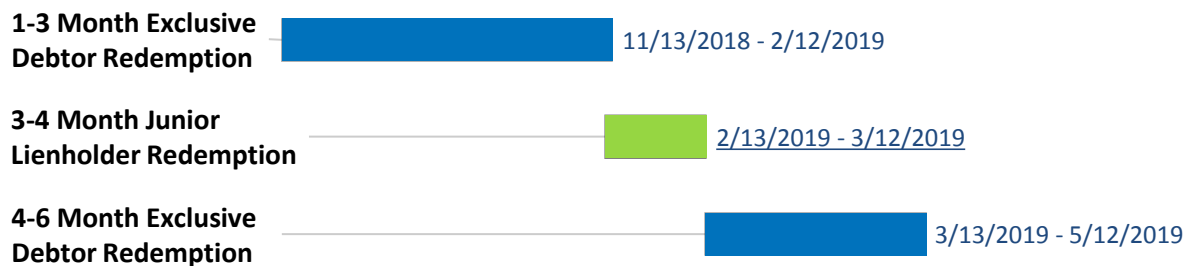


# Statutory Redemption Timeline

## Standard 12 month Redemption Timeline:



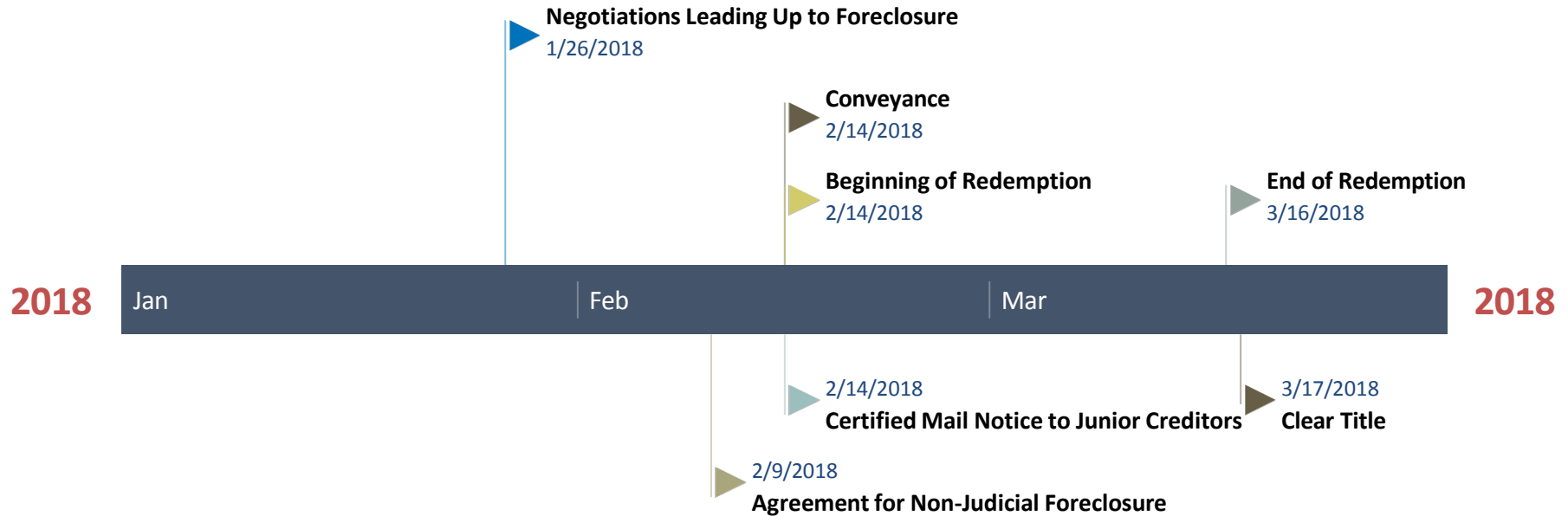
## Shortened Redemption: Less than 10 Acres, Waiver of Deficiency, and Mortgage Provides Agreement for Reduction in Redemption:



If a party stays execution, no right to redeem by that party.

# Agricultural Foreclosure

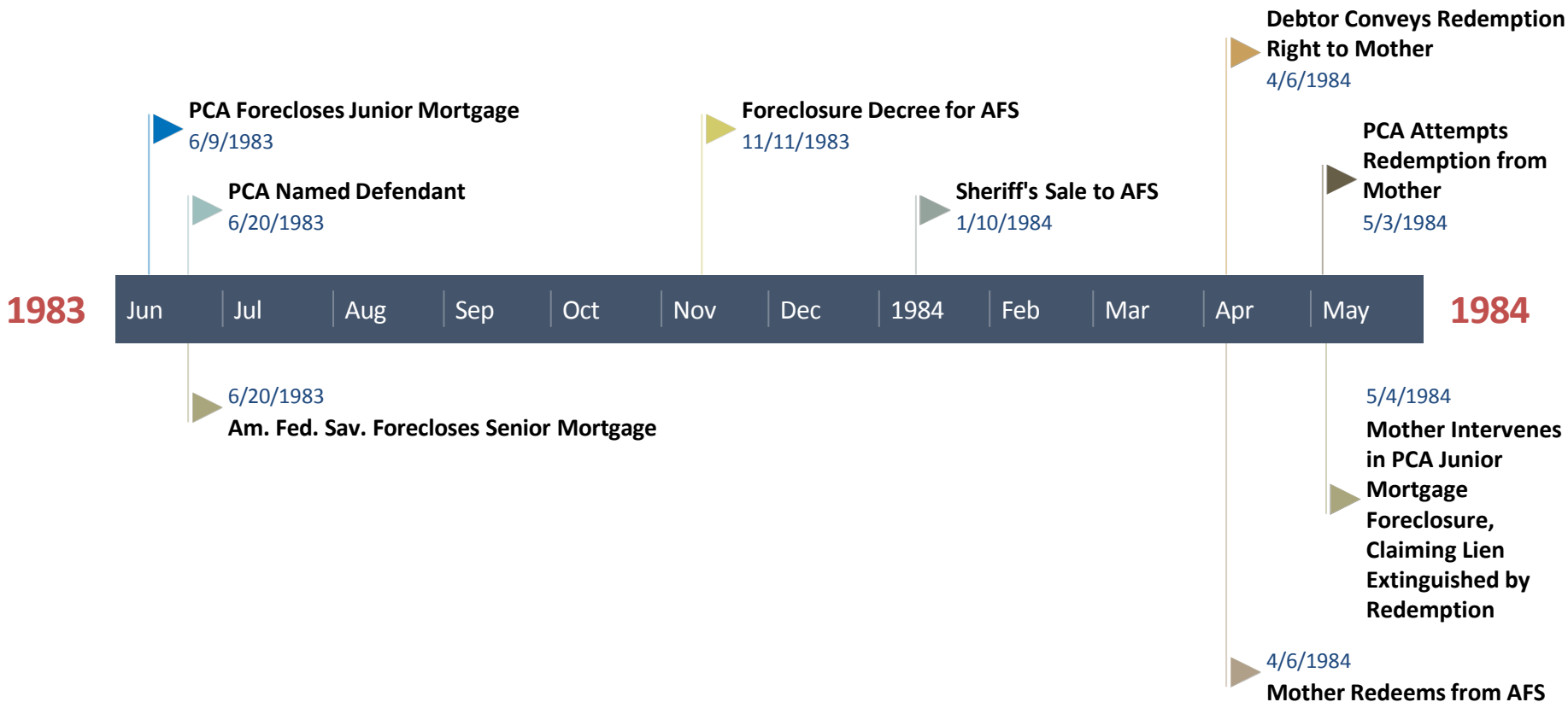
## Non-Judicial Voluntary Foreclosure:



Mandatory Terms: (1) Borrower conveys all interest in real estate; (2) Lender waives deficiency; (3) Lender has immediate access to property; and (4) Recording of jointly executed document that states election of non-judicial foreclosure.

# Agricultural Foreclosure

## Redemption Case Study: *Farmers Prod. Credit Ass'n v. McFarland*, 374 N.W.2d 654 (Iowa 1985)



# Agricultural Foreclosure

## Majority:

- “Although redemption by the mortgagor or assignee during the exclusive period prevents redemption by a junior lienholder, it does not provide the redeemer complete relief from junior liens.”

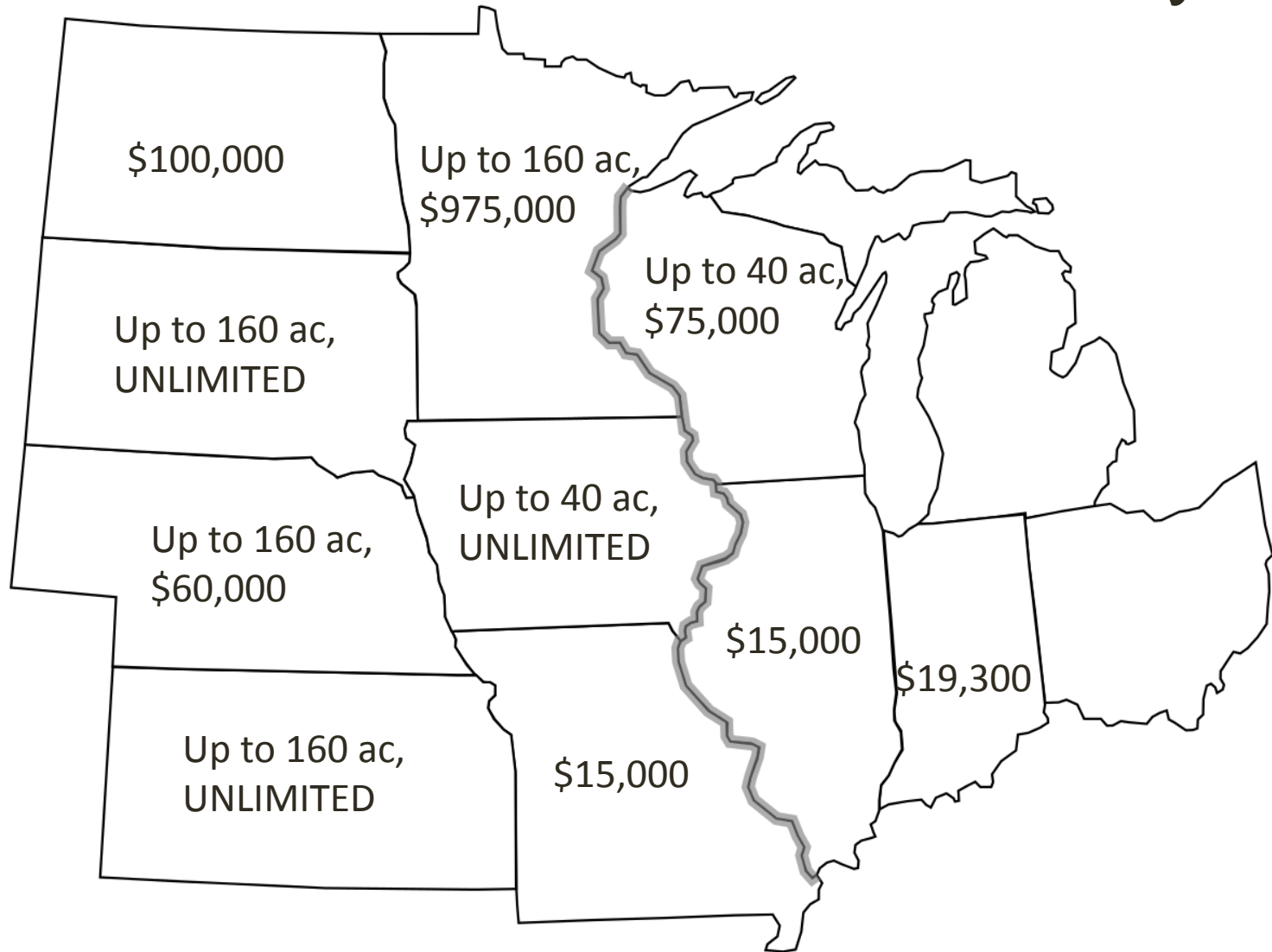
## Dissent:

- “[J]unior lienors have no justifiable expectation that their liens will survive the sale . . . they must take the statutory system of redemption as the legislature has established it, including the risk of redemption by the mortgagor or the mortgagor's assignee during the exclusive period.”

## *McFarland* Takeaways:

- Majority decision may be challenged
- Do not risk losing junior lienholder redemption
- BID AT SHERIFF’S SALE

# Midwest Farm Homestead Survey



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# Iowa Farm Homestead

Creative homestead platting – Debtor’s choice

Iowa Homestead Liable for:

- Pre-acquisition debts; and
- Debts secured by mortgage

All property subject to execution must be sold first.

Indivisible homestead – each owner entitled to the whole homestead. *In re Gaeta*, No. 99-3810-DH (Bankr. S.D. Iowa, Sept. 28, 2000) (Hill, J.).



# Fixture Filings

## What is a FIXTURE?

- Merriam-Webster: “An item of movable property so incorporated into real property that it may be regarded as legally a part of it.”
- Black’s Law Dictionary: “Personal property that is attached to land or a building and that is regarded as an irremovable part of the real property, such as a fireplace built into a home.”
- Uniform Commercial Code: “Goods that have become so related to particular real property that an interest in them arises under real property law.”

## The PROBLEM:

What do any of these mean?

# Fixture Filings

So, the Courts created a different fixture definition:

Three requirements:

- Annexation
- Adaptation
- Intention

“The intention of the party annexing the improvement is the ‘paramount factor’ in determining whether the improvement is a fixture.” *Young v. Iowa Dep't of Transp.*, 490 N.W.2d 554, 556 (Iowa 1992).

The PROBLEM:

Better, but what does this test mean?

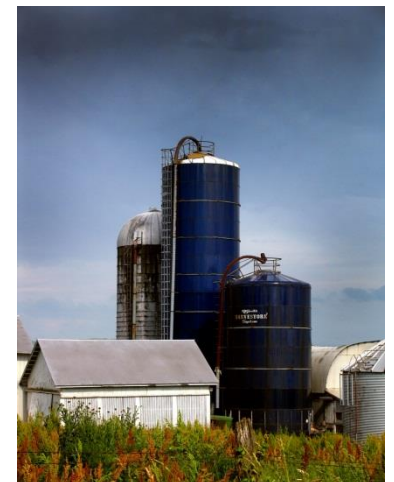
# Fixture Filings

## Example Fixtures:

- LP Tanks
- Silos
- Grain Bins
- Chemical Tanks
- Irrigation Equipment
- Grain Dryers
- Hoop Buildings

## Example Non-Fixtures:

- LP Tanks
- Silos
- Grain Bins
- Chemical Tanks
- Irrigation Equipment
- Grain Dryers
- Hoop Buildings



# Fixture Filings

Any doubts?

- Treat goods as both fixtures AND personal property.
- Ordinary building materials cannot become fixtures
  - Security interests do not continue once incorporated into real estate
  - Mechanic's lien laws

UCC contemplates three types of filings on a fixture:

- Standard UCC-1 Financing Statement – a filing on fixtures
- A “fixture filing”
- Mortgage effective as a financing statement

Type of filing impacts priority.

# Fixture Filings

## “Fixture Filing”

- Special defined term in the UCC
- “A financing statement covering goods that are or are to become fixtures and satisfying Section 9-502(a) & (b).”
- Only effective for fixtures

Ordinary Requirements – 9-502(a): name of debtor and secured party, description of collateral.

Extra Requirements – 9-502(b):

- Indicates fixture coverage
- Indicates filed in county recorders office
- Legal description of real property
- Name of record owner (if Debtor does not have interest)



# Fixture Filings

## UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS

9. NAME OF FIRST DEBTOR: Same as line 1a or 1b on Financing Statement if line 1b was left blank because Individual Debtor name did not fit, check here

9a. ORGANIZATION'S NAME

OR

9b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

10. DEBTOR'S NAME: Provide (10a or 10b) only one additional Debtor name or Debtor name that did not fit in line 1b or 2b of the Financing Statement (Form UCC1) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name) and enter the mailing address in line 10c

10a. ORGANIZATION'S NAME

OR

10b. INDIVIDUAL'S SURNAME

INDIVIDUAL'S FIRST PERSONAL NAME

INDIVIDUAL'S ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

10c. MAILING ADDRESS

CITY

STATE

POSTAL CODE

COUNTRY

11.  ADDITIONAL SECURED PARTY'S NAME or  ASSIGNOR SECURED PARTY'S NAME: Provide only one name (11a or 11b)

11a. ORGANIZATION'S NAME

OR

11b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

11c. MAILING ADDRESS

CITY

STATE

POSTAL CODE

COUNTRY



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# Fixture Filings

12. ADDITIONAL SPACE FOR ITEM 4 (Collateral):

13.  This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS (if applicable)

14. This FINANCING STATEMENT:

covers timber to be cut  covers as-extracted collateral  Is filed as a fixture filing

15. Name and address of a RECORD OWNER of real estate described in Item 16 (if Debtor does not have a record interest):

16. Description of real estate:

Insert Legal Description:  
NW1/4 of the SE1/4 . . .

17. MISCELLANEOUS:

International Association of Commercial Administrators (IACA)

FILING OFFICE COPY — UCC FINANCING STATEMENT ADDENDUM (Form UCC1Ad) (Rev. 04/20/11)



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# Fixture Filings

Mortgage effective as a financing statement fixture filing.

Mortgage must satisfy 9-502(c):

- Describe goods covered;
- The goods are or will become fixtures related to the described real estate;
- Satisfies ordinary financing statement requirements; and
- Mortgage is recorded.

**Fixture Filing.** From the date of its recording, this Mortgage shall be effective as a financing statement filed as a fixture filing with respect to the Personal Property and for this purpose, the name and address of the debtor is the name and address of Grantor as set forth on the first page of this Mortgage and the name and address of the secured party is the name and address of Lender as set forth on the first page of this Mortgage.

Assignments – comply with local real property laws

Amendments – no guidance in UCC





# Fixture Filings

## UCC choice of law:

- For security interests perfected by fixture filing, the law of the state where the fixture is located governs perfection and priority.

## Filing Location:

- For filing on fixtures: location of Debtor
- For “fixture filings” and mortgages: location of goods/fixtures

# Fixture Filings

Example: Northern Iowa farmer owns farm land in Worth County, IA, and Freeborn County, MN. Bank finances construction of Sukup bins and dryer facility in Freeborn County. Security agreement describes the bins and dryer and their attachment as fixtures.

Choices:

IA SOS Office	Worth County Recorder
MN SOS Office	Freeborn County Recorder

Decision:

UCC-1 Financing Statement & Fixture Filing Addendum	IA SOS Office
UCC-1 Financing Statement & Fixture Filing Addendum	Freeborn County Recorder

# Fixture Filings - Priority

## General Rules: First in time, and mortgage trumping

- Priority of security interests rank from the earliest of filing or perfection
- Real estate laws: priority of interests in real estate in order of recording
- Interest in fixtures created under real property law holds priority over UCC security interest in fixtures.

## Exceptions:

- PMSI & Fixture Filing within 20 days of fixture status
- Fixture Filing first in time & priority in chain of title
- Security interest perfected and readily removable goods
- Security interest perfected prior to judicial lien
- Consent given by mortgagee, regardless of security interest perfection



# Fixture Filings - Priority

## Fixture Issues to Spot:

- UCC Financing Statements for
  - Grain bins
  - Grain dryers
  - Chemical or LP tanks
  - Buildings
- Fixture Filing on collateral described in financing statement, and date of Fixture Filing.
- Sufficiency of legal description in Fixture Filing
- Attempted “lease” transaction of fixture
  - True lease or secured transaction?
  - UCC Financing Statement for “leased” property, often a building or tank
  - Commonly lack Fixture Filing due to insufficient information on legal description

# Marshaling Assets

## Marshaling:

- Creditors having common debtor(s) – Common Debtor
- Common collateral, and “extra” collateral, owned by the common debtor(s) – Common Fund
- No prejudice to marshaled creditor in first seeking satisfaction out of “extra” collateral – No Prejudice

The purpose of marshaling “is to prevent the arbitrary action of a senior lienor from destroying the rights of a junior lienor or a creditor having less security. It deals with the rights of all who have an interest in the property involved and is applied only when it can be equitably fashioned as to all of the parties.” *In re Oxford Dev., Ltd.*, 67 F.3d 683, 686–87 (8th Cir. 1995).

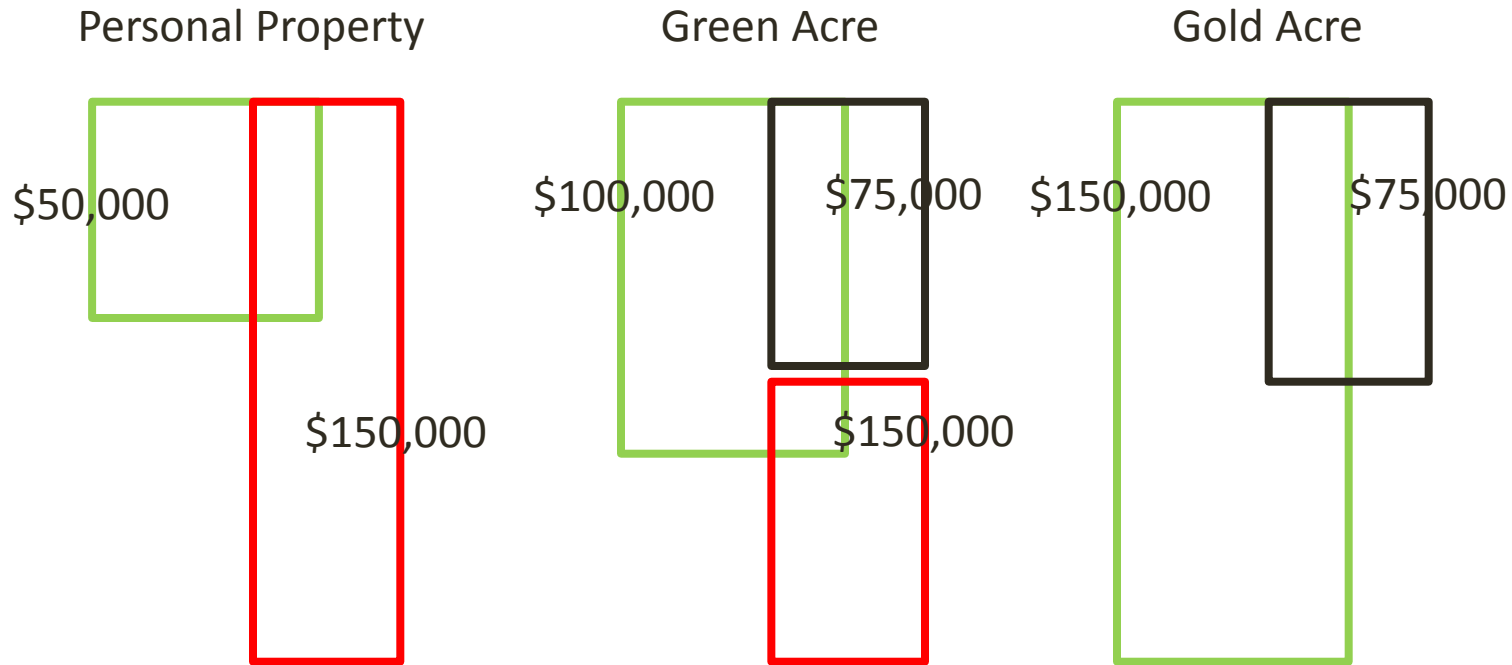


# Marshaling Assets - Available

Total Assets: \$300,000, pledged by father/son borrowers

Red Bank: Owed \$150,000 – Chattels and Single Mortgage

Black Bank: Owed \$75,000 – Two Mortgages, priority

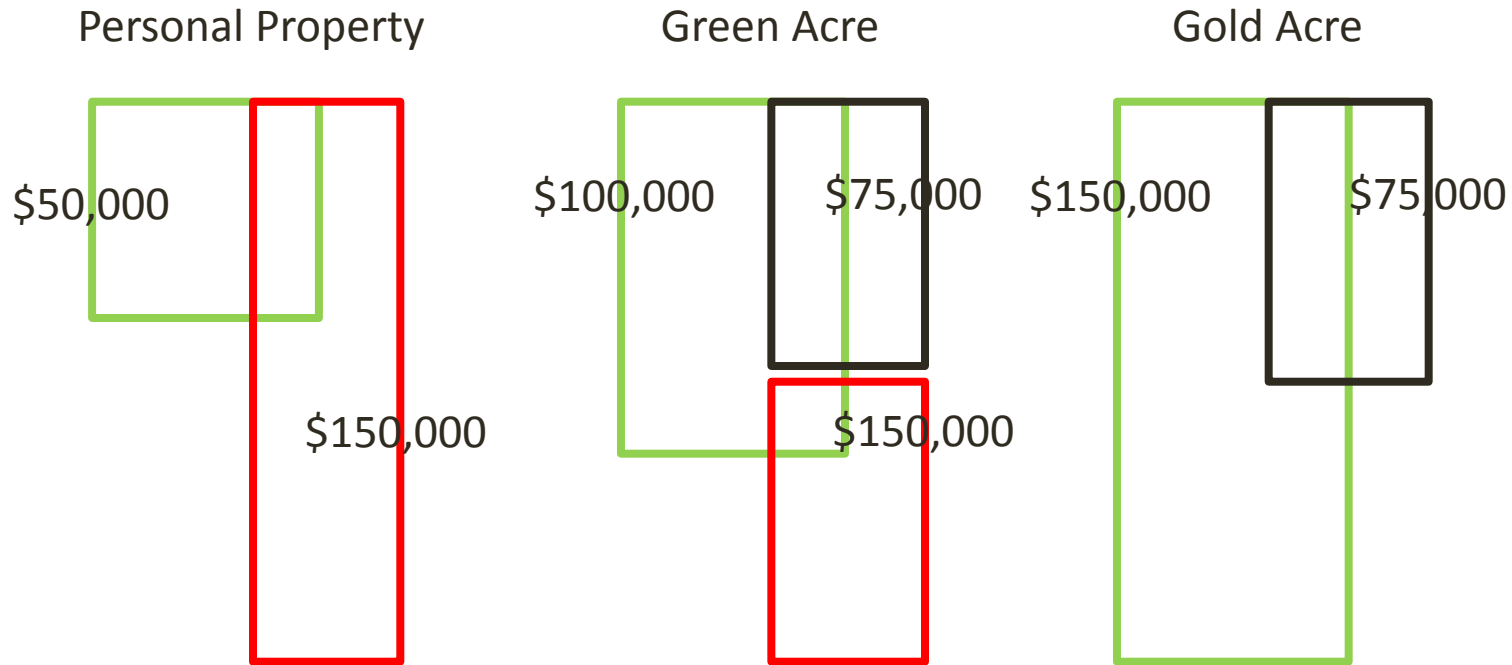


# Marshaling Assets - Unavailable

Total Assets: \$300,000, son borrower, father owns Gold Acre

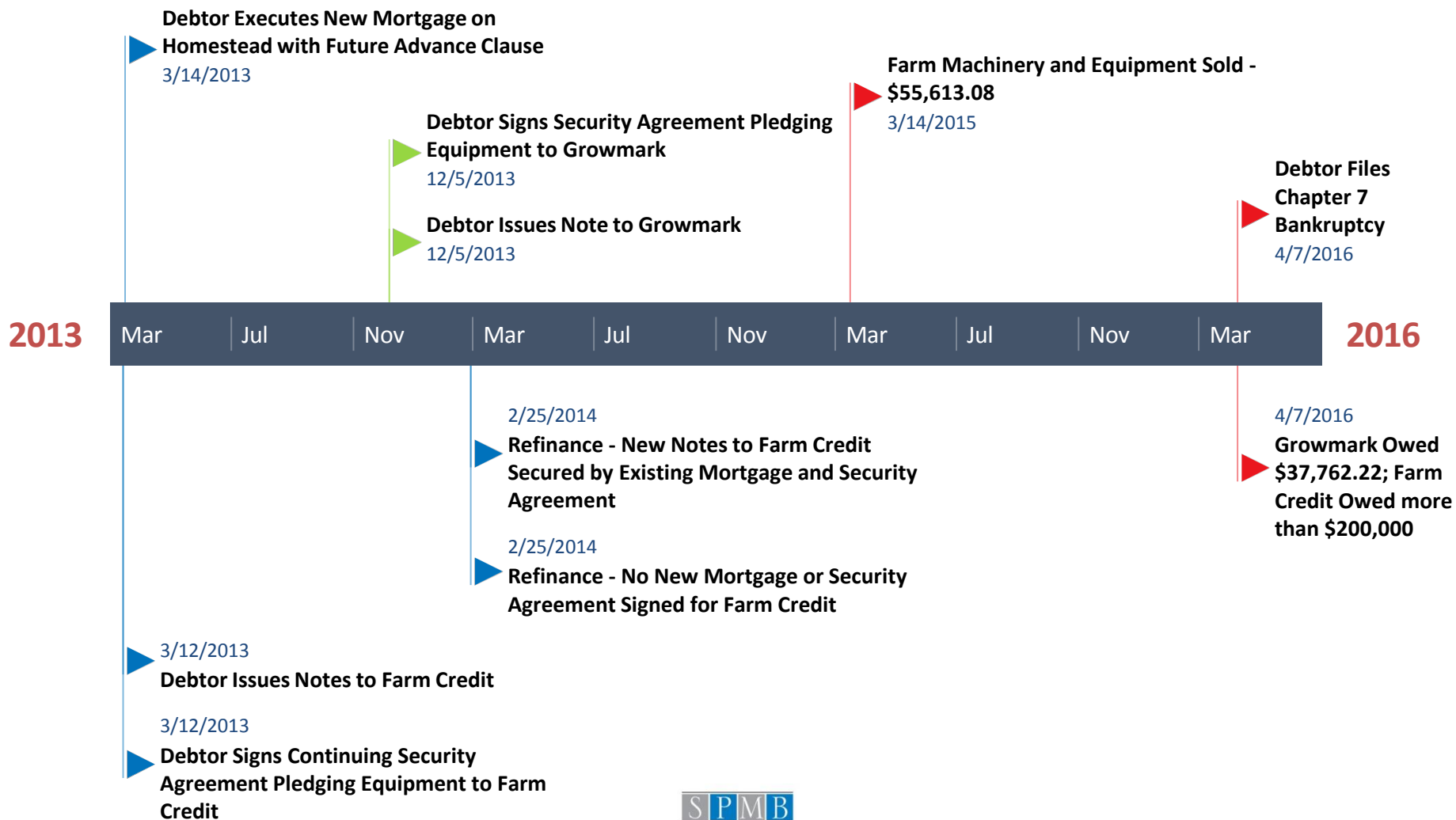
Red Bank: Owed \$150,000 – Chattels and Single Mortgage

Black Bank: Owed \$75,000 – Two Mortgages, priority



# Marshaling Assets

Marshaling Case Study: *Schantz v. Farm Credit & Growmark, Inc.*, No. 16-09016 (Bankr. N.D. Iowa Aug. 7, 2017).





# Marshaling Assets

## Key Arguments in *Schantz*

### Debtors & Farm Credit:

- Cannot marshal onto an exempt Iowa Homestead due to exhaustion requirement.
- The 2014 refinance contract included the new 2014 notes, and existing security agreement and mortgage.

### Growmark:

- Marshaling is not a “judicial sale.”
- The Farm Credit mortgage and security agreement are separate contracts – to exhaustion required.

# Marshaling Assets

## Court Ruling – Schantzes and Farm Credit Win:

- Contract issue: “While there were multiple documents prepared to support Farm Credit’s loan and security agreements – two promissory notes and separate mortgage and personal property security documents – they were treated by both Farm Credit and Debtors as being part of the same transaction and contract.”
- Judicial Sale issue: “The term ‘judicial sale’ as used in [Iowa Homestead law] was intended to encompass any judicially compelled disposition of the homestead, whether denominated a ‘sale’ or not.”
- Equity issue: “marshaling should not be applied when its effect is to defeat a state exemption—particularly an Iowa homestead exemption.”

Growmark could still appeal



# Questions?



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