



SIMMONS PERRINE
MOYER BERGMAN PLC

Minimizing Risk on Problematic Ag Loans

November 3, 2015

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Iowa Agricultural Liens



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Perfecting Uniform Commercial Code (“UCC”)

- Revised Article 9.
- Requires creditors holding an ag lien to file a UCC-1 financing statement.
- Sets specific time period for each ag lien to obtain “super priority”.
- Ag lien becomes perfected when the lien becomes effective and creditor has complied with perfection requirements.

Perfecting Security Interest in Fixtures

- Personal Property Can Become a Fixture to Real Estate
 - *Cornell College v. Crain* - 235 N.W. 731 (Iowa 1931)
- Lender Must Record Fixture Filing
- Priority
 - Generally, first to record takes priority.
 - Purchase Money Security Interest (“PMSI”)

Federal Farm Security Act of 1985

- Buyers of farm products (e.g., livestock, crops and other products) will generally purchase products free and clear of lender's lien unless lender provides notice.
- Notice
 - Clear Title States
 - Direct Notice States
- Contents of Notice
- Lender should request a list from borrower of his/her buyers

Iowa Agricultural Liens

Landlord Lien - Iowa Code § 570

- **Lien**
 - Landlords may claim a lien for the rent owed upon all crops grown upon the leased premises, and upon any other personal property of the tenant which has been used or kept on the leased premises during the terms of the lease.
- **Perfection**
 - Landlord must file a financing statement.
- **Priority**
 - Landlord will have priority over conflicting liens, including prior liens, provided the landlord files the financing statement within twenty (20) days of the debtor taking possession of the leased premises.
- **Unauthorized Sale of Grain - Iowa Code § 570.9**
 - If tenant sells grain subject to lien without landlord's written consent, the tenant is guilty of theft.

Iowa Agricultural Liens

Agricultural Supply Dealer Lien - Iowa Code § 570A

- Overview
 - Secures payment of farmer to ag supply dealers.
 - Expanded notice and filing requirements in order to protect farmers.
- Lien
 - An ag supply dealer furnishing an ag product to a farmer has an ag lien for the retail cost of the product, including labor for a period of four-hundred ninety (490) days from the date that the farmer purchased the ag product.
 - Lien attaches to all crops which benefited from ag product, or livestock that consumed the product, for a period of sixteen (16) months from the date of perfection.
- Perfection
 - The dealer must file the financing statement within thirty-one (31) days after the farmer purchases the product.

Iowa Agricultural Liens

Agricultural Supply Dealer Lien - Continued

- Financial Memorandum
 - Dealer will issue a certified request to the bank with a waiver of confidentiality from borrower.
 - Bank has four (4) business days to respond with a memorandum.
 - Bank must state debtor has sufficient net worth or a line of credit.
- Ovens Feed & Supply, Inc. v. Primebank, 808 N.W.2d 186 (Iowa 2011)
- Protecting Against Lien

Iowa Agricultural Liens

Harvester's Lien - Iowa Code § 571

- Overview
 - Applies to persons who perform harvesting services (e.g., baling, combining, cutting, picking, husking, etc.).
 - Harvester has ag lien for the reasonable value of his/her services.
 - The lien applies to all crops harvested by harvester.
- Perfection
 - Financing statement must be filed within ten (10) days after services are rendered.
- Priority
 - When perfected, harvester's lien takes priority over landlord's lien.

Iowa Agricultural Liens

Veterinarian's Lien - Iowa Code § 581

- **Overview**
 - A veterinarian shall have a lien for the reasonable value of the services rendered in the livestock he/she treated.
- **Perfection**
 - Veterinarian must perfect within sixty (60) days of treating the livestock.
- **Priority**
 - If perfected, lien takes priority over all other conflicting liens in the livestock that was treated.
 - If not perfected, Article 9 applies.

Iowa Agricultural Liens

Custom Cattle Feedlot Lien - Iowa Code § 579A

- Overview
 - A custom cattle feedlot operator (“CCFO”) shall have a lien upon the cattle and identifiable cash proceeds from the sale of the cattle for the amount of the contract price for the feed and care of the cattle.
 - Lien is effective at the time the cattle arrive at the feedlot.
 - CCFO must file a financing statement within twenty (20) days after the cattle arrive at feedlot.
- Enforcement
 - After the cattle depart, operator may enforce lien against the holder of the identifiable cash proceeds from the sale of the cattle; or
 - Against the processor who has purchased the cattle within three (3) days after cattle depart.

Iowa Agricultural Liens

Commodity Production Contract Lien - Iowa Code § 579B

- Overview
 - Protects farmers that are growing crops or feeding livestock that is under contract with another entity.
 - Between 1980 and 1994 the number of Iowa farmers growing crops or raising livestock increased from 2% to over 20%.
- Perfection
 - Livestock
 - Effective when the livestock first arrives.
 - Financing statement must be filed within 45 days of the first arrival unless continuing arrival.
 - If continuing arrival, financing statement must be filed within 180 days of the first arrival.
 - Lien terminates one year after livestock is no longer under authority of farmer.
 - Crops
 - Effective when crop is planted.
 - Financing statement must be filed within 45 days of the crop being planted.
 - Lien terminates one year after crop is no longer under authority of farmer.
- Enforcement
 - Article 9 governs enforcement.

Identifying and Minimizing Risks



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Security Agreements and Financing Statements

- Debtor's name on financing statement
 - Individuals
 - Registered Organizations
 - Trusts
- Require borrower to provide a list of buyers of his/her "farm products" - crops, livestock, etc.
- Filed with Iowa Secretary of State
 - Note - some states require the financing statement to be filed with Secretary of State and county where debtor resides (e.g., Minnesota).
- Financing statement should use all encompassing language for farm products.
- After-acquired property.

Participation Agreements

- Lead Banks
 - Limitations on duties and standard of care.
 - Disclaimer of liability other than acts of gross negligence or willful misconduct by lead bank.
- Participant Banks
 - Participant bank should ensure lead bank has staff and expertise to manage credit.
 - Rights of participant during default and workout (e.g., input into restructuring of loan; approach towards liquidation).
 - Acts that require participant banks' approval.
- Default by Lead Bank
 - *Ipsa facto* provision - allows senior minority participant to takeover administration of loan from lead bank in the event of insolvency or government takeover.
 - May be voided by acquiring bank under 12 C.F.R. § 1821(e)(13)(A).

Review Loan Documents to make sure
cross collateralized and cross guaranteed

Consider a Collateral Agreement

Intercreditor and Subordination Agreements

- Debt Subordination
 - Subordinated lender agrees to defer payment of some or all of its claims until senior lender is paid in full
 - Partial vs. Full Debt Subordination
- Lien Subordination
 - Subordinated lender agrees its lien is junior to the lien of another lender.
 - Remedy standstill clauses.
 - Turnover clauses.
- Lien Waiver
 - Commodity Credit Corporation standard document
- Severance Agreement
 - Commodity Credit Corporation form
 - Used for grain bin financing
 - Gives Commodity Credit Corporation right to remove grain bin

Landlord/Tenant Concerns

- Access Agreement
- Landlord Waiver
 - Disclaimer of Interest or Subordination
 - Consent to Entry onto Premises
 - Cure Notice to Lender
- Collateral Assignment of Lease

Subordination, Non-Disclosure and Attornment Agreement (SNDA)

- Protects the lender from claims of the tenant against landlord following foreclosure.
- Tenant agrees to be bound by terms of lease in the event of lender takes possession of property.
- Lender should include provision allowing it a cure period, following notice from borrower, of any default by landlord.

Commodity Accounts

- Need control agreement for perfection
- Need extra analysis for margin accounts

Grain Companies

- Warehouse Receipts
 - Perfection by Filing UCC Financing Statement on Grain
 - Perfection by Control of Negotiable Warehouse Receipts
- Electronic Warehouse Receipts

Forward Contracts

- Overview
 - Allows farmers to sell crops at a fixed rate in the future
 - Can be used as collateral for lender

Marketing and Other Production Contracts

- Protecting Lender's Interest
 - Collateral Assignment
 - Review borrower's contracts for assignment language
 - Request consent to assignment from purchaser
 - Two-Party Checks
 - Food Security Act Notice
 - Must be served within one year

Mediation

- Iowa Code § 654A.6(1)
 - A creditor seeking to foreclose upon ag real estate, forfeit a contract to purchase ag property, enforce a security interest in ag property, or otherwise garnish, attach or execute on ag property must file a request for mediation with the Farm Mediation Service.
 - Prerequisite to litigation
- “Agricultural property” means agricultural land that is principally used for farming and personal property that is used as security to finance a farm operation or used as part of a farm operation including equipment, crops, livestock, and proceeds of the security.
- Applies to secured debt of \$20,000 or more.
- Applies to borrowers who are natural persons operating a farm, or any corporation, trust, or limited partnership.

Recent Developments in the Bankruptcy Arena



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Cases Report for 10/22/2015

United States Bankruptcy Court

Northern District of Iowa

Case No. Related Case Info	TP	Ch	Party Info	Judge Trustee	Dates	Other Info								
14-01566	bk	12	David John Bryngelson Attorney for Debtor: Michael John Sands	Collins Dunbar	<table border="1"> <tr> <td><i>Filed:</i></td> <td>10/10/2014</td> </tr> <tr> <td><i>Entered:</i></td> <td>10/10/2014</td> </tr> <tr> <td><i>Dismissed:</i></td> <td>03/19/2015</td> </tr> <tr> <td><i>Closed:</i></td> <td>09/28/2015</td> </tr> </table>	<i>Filed:</i>	10/10/2014	<i>Entered:</i>	10/10/2014	<i>Dismissed:</i>	03/19/2015	<i>Closed:</i>	09/28/2015	<i>Office:</i> Sioux City <i>Disp:</i> Dismissed for Failure to File Information <i>Assets:</i> Yes <i>Fee:</i> Paid <i>County:</i> OSCEOLA- IA Voluntary <i>Nature of Business:</i> Other <i>Nature of Debt:</i> Business <i>Type of Debtor:</i> Individual
<i>Filed:</i>	10/10/2014													
<i>Entered:</i>	10/10/2014													
<i>Dismissed:</i>	03/19/2015													
<i>Closed:</i>	09/28/2015													
15-00452	bk	12	Chad W. Hartman and Pamela M. Hartman Attorney for Debtor: Donald H. Molstad Attorney for Joint Debtor: Donald H. Molstad	Collins Dunbar	<table border="1"> <tr> <td><i>Filed:</i></td> <td>04/07/2015</td> </tr> <tr> <td><i>Entered:</i></td> <td>04/07/2015</td> </tr> </table>	<i>Filed:</i>	04/07/2015	<i>Entered:</i>	04/07/2015	<i>Office:</i> Sioux City <i>Assets:</i> Yes <i>Fee:</i> Paid <i>County:</i> UNION-SD Voluntary <i>Nature of Business:</i> Other <i>Nature of Debt:</i> Business <i>Type of Debtor:</i> Individual				
<i>Filed:</i>	04/07/2015													
<i>Entered:</i>	04/07/2015													

15-00704	bk	12	David John Bryngelson Attorney for Debtor: Michael John Sands	Collins Dunbar	<table border="1"> <tr> <td><i>Filed:</i></td> <td>05/12/2015</td> </tr> <tr> <td><i>Entered:</i></td> <td>05/12/2015</td> </tr> <tr> <td><i>Dismissed:</i></td> <td>07/08/2015</td> </tr> <tr> <td><i>Closed:</i></td> <td>09/18/2015</td> </tr> </table>	<i>Filed:</i>	05/12/2015	<i>Entered:</i>	05/12/2015	<i>Dismissed:</i>	07/08/2015	<i>Closed:</i>	09/18/2015	<i>Office:</i> Sioux City <i>Disp:</i> Dismissed for Other Reason <i>Assets:</i> Yes <i>Fee:</i> Paid <i>County:</i> OSCEOLA- IA Voluntary <i>Nature of Business:</i> Other <i>Nature of Debt:</i> Business <i>Type of Debtor:</i> Individual
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<i>Entered:</i>	05/12/2015													
<i>Dismissed:</i>	07/08/2015													
<i>Closed:</i>	09/18/2015													
15-00737	bk	12	Kent R Franks and Sandra A Franks Attorney for Debtor: Gina L Kramer Attorney for Joint Debtor: Gina L Kramer	Collins Dunbar	<table border="1"> <tr> <td><i>Filed:</i></td> <td>05/18/2015</td> </tr> <tr> <td><i>Entered:</i></td> <td>05/18/2015</td> </tr> </table>	<i>Filed:</i>	05/18/2015	<i>Entered:</i>	05/18/2015	<i>Office:</i> Dubuque <i>Assets:</i> Yes <i>Fee:</i> Paid <i>County:</i> CLAYTON- IA Voluntary <i>Nature of Business:</i> Other <i>Nature of Debt:</i> Business <i>Type of Debtor:</i> Individual				
<i>Filed:</i>	05/18/2015													
<i>Entered:</i>	05/18/2015													

15-01110	bk	12	Hendrina Vander Vegt Attorney for Debtor: William Paul Baresel	Collins Dunbar	Filed: 08/03/2015	Office: Waterloo Disp: Dismissed for Other Reason Assets: Yes Fee: Paid County: BUTLER-IA Voluntary Nature of Business: Other Nature of Debt: Business Type of Debtor: Individual
					Entered: 08/03/2015	
					Dismissed: 10/09/2015	
15-01111	bk	12	Boerderij De Veldhoek, LLC Attorney for Debtor: William Paul Baresel	Collins Dunbar	Filed: 08/03/2015	Office: Waterloo Disp: Dismissed for Other Reason Assets: Yes Fee: Paid County: BUTLER-IA Voluntary Nature of Business: Other Nature of Debt: Business Type of Debtor: Corporation
					Entered: 08/03/2015	
					Dismissed: 10/09/2015	
15-01328	bk	12	David John Bryngelson Attorney for Debtor: Michael John Sands	Collins Dunbar	Filed: 09/18/2015	Office: Sioux City Disp: Dismissed for Other Reason Assets: Yes Fee: fee not paid County: OSCEOLA-IA Voluntary Nature of Business: Other Nature of Debt: Business Type of Debtor: Individual
					Entered: 09/18/2015	
					Dismissed: 10/02/2015	

114TH CONGRESS
1ST SESSION

S. 194

To amend title 11 of the United States Code to clarify the rule allowing discharge as a nonpriority claim of governmental claims arising from the disposition of farm assets under chapter 12 bankruptcies.

IN THE SENATE OF THE UNITED STATES

JANUARY 20, 2015

Mr. GRASSLEY (for himself and Mr. FRANKEN) introduced the following bill;
which was read twice and referred to the Committee on the Judiciary

A BILL

To amend title 11 of the United States Code to clarify the rule allowing discharge as a nonpriority claim of governmental claims arising from the disposition of farm assets under chapter 12 bankruptcies.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Family Farmer Bank-

5 ruptcy Clarification Act of 2015”.

1 SEC. 2. CLARIFICATION OF RULE ALLOWING DISCHARGE
2 TO GOVERNMENTAL CLAIMS ARISING FROM
3 THE DISPOSITION OF FARM ASSETS UNDER
4 CHAPTER 12 BANKRUPTCIES.

5 (a) IN GENERAL.—Subchapter II of chapter 12 of
6 title 11, United States Code, is amended by adding at the
7 end the following:

8 **“§ 1232. Claim by a governmental unit based on the**
9 **disposition of property used in a farming**
10 **operation**

11 “(a) Any unsecured claim of a governmental unit
12 against the debtor or the estate that arises before the fil-
13 ing of the petition, or that arises after the filing of the
14 petition and before the debtor’s discharge under section
15 1228, as a result of the sale, transfer, exchange, or other
16 disposition of any property used in the debtor’s farming
17 operation—

18 “(1) shall be treated as an unsecured claim
19 arising before the date on which the petition is filed;

20 “(2) shall not be entitled to priority under sec-
21 tion 507;

22 “(3) shall be provided for under a plan; and

23 “(4) shall be discharged in accordance with sec-
24 tion 1228.

25 “(b) For purposes of applying sections 1225(a)(4),
26 1228(b)(2), and 1229(b)(1) to a claim described in sub-

•S 194 IS

1 section (a) of this section, the amount that would be paid
2 on such claim if the estate of the debtor were liquidated
3 in a case under chapter 7 of this title shall be the amount
4 that would be paid by the estate in a chapter 7 case if
5 the claim were an unsecured claim arising before the date
6 on which the petition was filed and were not entitled to
7 priority under section 507.

8 “(e) For purposes of applying sections 523(a),
9 1228(a)(2), and 1228(e)(2) to a claim described in sub-
10 section (a) of this section, the claim shall not be treated
11 as a claim of a kind specified in section 523(a)(1).

12 “(d)(1) A governmental unit may file a proof of claim
13 for a claim described in subsection (a) that arises after
14 the date on which the petition is filed.

15 “(2) If a debtor files a tax return after the filing of
16 the petition for a period in which a claim described in sub-
17 section (a) arises, and the claim relates to the tax return,
18 the debtor shall serve notice of the claim on the govern-
19 mental unit charged with the responsibility for the collec-
20 tion of the tax at the address and in the manner des-
21 ignated in section 505(b)(1). Notice under this paragraph
22 shall state that the debtor has filed a petition under this
23 chapter, state the name and location of the court in which
24 the case under this chapter is pending, state the amount
25 of the claim, and include a copy of the filed tax return

3 “(3) If notice of a claim has been served on the gov-
4 ernmental unit in accordance with paragraph (2), the gov-
5 ernmental unit may file a proof of claim not later than
6 180 days after the date on which such notice was served.
7 If the governmental unit has not filed a timely proof of
8 the claim, the debtor or trustee may file proof of the claim
9 that is consistent with the notice served under paragraph
10 (2). If a proof of claim is filed by the debtor or trustee
11 under this paragraph, the governmental unit may not
12 amend the proof of claim.

13 “(4) A claim filed under this subsection shall be de-
14 termined and shall be allowed under subsection (a), (b),
15 or (c) of section 502, or disallowed under subsection (d)
16 or (e) of section 502, in the same manner as if the claim
17 had arisen immediately before the date of the filing of the
18 petition.”.

19 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

20 (1) IN GENERAL.—Subchapter II of chapter 12
21 of title 11, United States Code, is amended—

22 (A) in section 1222(a)—

23 (i) in paragraph (2), by striking “un-
24 less—” and all that follows through “the
25 holder” and inserting “unless the holder”;

1 (ii) in paragraph (3), by striking
2 “and” at the end;

3 (iii) in paragraph (4), by striking the
4 period at the end and inserting “; and”;
5 and

6 (iv) by adding at the end the fol-
7 lowing:

8 “(5) subject to section 1232, provide for the
9 treatment of any claim by a governmental unit of a
10 kind described in section 1232(a).”;

11 (B) in section 1228—
12 (i) in subsection (a)—
13 (I) in the matter preceding para-
14 graph (1)—
15 (aa) by inserting a comma
16 after “all debts provided for by
17 the plan”; and
18 (bb) by inserting a comma
19 after “allowed under section 503
20 of this title”; and
21 (II) in paragraph (2), by striking
22 “the kind” and all that follows and in-
23 serting “a kind specified in section
24 523(a) of this title, except as provided
25 in section 1232(c).”; and
1 (ii) in subsection (e)(2), by inserting
2 “, except as provided in section 1232(c)”
3 before the period at the end; and

4 (C) in section 1229(a)—
5 (i) in paragraph (2), by striking “or”
6 at the end;
7 (ii) in paragraph (3), by striking the
8 period at the end and inserting “; or”; and
9 (iii) by adding at the end the fol-
10 lowing:
11 “(4) provide for the payment of a claim de-
12 scribed in section 1232(a) that arose after the date
13 on which the petition was filed.”.
14 (2) TABLE OF SECTIONS.—The table of sections
15 for subchapter II of chapter 12 of title 11, United
16 States Code, is amended by adding at the end the
17 following:

“1232. Claim by a governmental unit based on the disposition of property used
in a farming operation.”.

18 (c) **EFFECTIVE DATE.**—The amendments made by
19 this section shall apply to any bankruptcy case that—

20 (1) is pending on the date of enactment of this
21 Act and relating to which an order of discharge
22 under section 1228 of title 11, United States Code,
23 has not been entered; or

1 (2) commences on or after the date of enact-
2 ment of this Act.

Questions?



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