

Lien Notification Statement to Lender.

The livestock production input lien and the crop production input lien are perfected in a similar manner. The first required step is to give notice to the lender (typically, a bank or other financial institution) of the individual or entity to whom the inputs are being provided. You must determine whether there is a bank or other financial institution with a security interest in the crops or livestock that the production inputs are to be used for. This can be accomplished by performing a UCC search on the individual or entity to which the inputs are being provided. A lien notification statement must be provided to the lender. The lien notification statement must be sent to the lender via certified mail, return receipt requested, in an envelope marked "IMPORTANT - LEGAL NOTICE." The lien-notification statement must disclose the following: (1) the name and address of the lender that is to receive notification; (2) the name and address of the supplier claiming the lien; (3) a description and the date or anticipated date or dates of the transaction and the retail cost or anticipated costs of the crop production input; (4) the name and address of the person to whom the crop production input was furnished; and (5) the name and address of the owner.

After providing the required lien notification statement to the debtor's lender, the lender has ten calendar days to respond by either providing a letter of commitment for part or all of the retail cost or anticipated costs of the production input as set forth in the lien-notification statement; or a written refusal to issue a letter of commitment. If a lender responds with a letter of commitment for part, or all, of the amount in the lien-notification statement, a lien for the amount stated in the letter of commitment may not be obtained. However, since the lender will have issued a letter of commitment, a lien is not necessary. If a lender responds with a refusal to provide a letter of commitment, the lien is effective; however, the rights of the lender and the supplier are not affected. This means that the production input lien will not have priority over an existing security interest of the lender in the event the production input lien is properly perfected.

If a lender does not respond to the lien-notification statement within ten calendar days after receiving it, a perfected production input lien corresponding to the lien-notification statement has priority over any security interest of the lender in the same crops, livestock, or their proceeds for the lesser of: (1) the amount stated in the lien-notification statement; or (2) the unpaid retail cost of the crop production input identified in the lien-notification statement.

It is advisable to send the lien-notification statement before sales of production inputs are consummated. This will reveal whether the lender will provide a letter of commitment before credit is extended. In the event the lender refuses to provide a letter of commitment, you have the option to refuse to consummate the sale of production inputs.

Perfection of Lien.

A production input lien under this section is perfected by filing a properly completed UCC financing statement in a timely manner. A crop production input lien must be perfected within six months after the last date that crop production inputs are furnished. A livestock production input lien must be perfected within six months after the last date that livestock production inputs are furnished.

The financing statement must provide the name of the debtor; provide the name of the secured party or a representative of the secured party; and indicate the collateral covered by the financing statement. The name of the debtor must be accurate. If the debtor is an organization such as a corporation or limited liability company, the name must match the name registered with the Minnesota Secretary of State. With respect to identification of collateral, a description of personal property is sufficient, whether or not it is specific, if it reasonably identifies what is described. Description of collateral reasonably identifies the collateral if it identifies the collateral by: (1) specific listing; (2) category; (3) a type of collateral defined in the Uniform Commercial Code; (4) quantity; (5) computational or allocational formula or procedure; or (6) any other method, if the identity of the collateral is objectively determinable. However, a description of collateral as “all the debtor's assets” or “all the debtor's personal property” or using words of similar import does not reasonably identify the collateral. The collateral description should include a description of the location of the crops or livestock.

The agricultural lien is a valuable collection tool. However, there are numerous requirements that must be met prior to obtaining a valid agricultural lien. Failure to satisfy these requirements can invalidate the agricultural lien. The commercial law attorneys at Rajkowski Hansmeier, Ltd. can provide additional information and assistance in obtaining an enforceable agricultural lien.

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