

Farm Profitability

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Differences Between Security Interest (Bank Lien) and Agricultural Lien (Input Supplier Lien)

| | <u>Article 9 Security Interest (Bank Lien)</u> | <u>Statutory Agricultural Liens (Input Supplier Lien)</u> |
|----------------------------|---|--|
| Scope of Lien | <u>Blanket lien</u> on all personal property of the farmer/rancher. | <u>Agricultural lien limited</u> to the goods or services furnished in connection with a debtor's farming operation. |
| Perfection | File UCC-1 finance statement. | File UCC-1 finance statement (MN) or statement in central notice system (ND). |
| State to File UCC-1 | File in the state <u>where farmer/rancher is domiciled</u> . For individual, in state of residence. For legal entity, in state that the legal entity was incorporated. | File in the state <u>where the farm products are located</u> . |
| Proceeds | Blanket lien not limited to <u>identifiable proceeds</u> . | <u>Agricultural lien limited to identifiable proceeds of the goods or services</u> . |
| Priority | Junior lien. | <u>Priority lien</u> . |

**STATUTORY AGRICULTURAL LIENS
STATE OF NORTH DAKOTA
Crops**

| Statutory Lien | Entitled to Claim | Scope of Lien | Notice Requirements | Attachment | Perfection |
|---|---|---|--|---|---|
| Agricultural Processor's Lien (N.D. Cent. Code §§35-30-01 through 305-30-06) | Person who processes, including threshing, combining, drying, or harvesting any crop or agricultural product. | Crop or product processed | Must send invoice to agricultural crop producer that if amount due is not paid a lien may be filed. | Effective from the date processing is completed | Perfected by filing a statement with the central notice system on or before 90 days after the supplies are furnished. Statement must include: (1) name and address of producer; (2) name and address of supplier; (3) description of crop with county and year to be harvested; (4) agreed price or value of services; (5) the social security number or EIN; and (6) description of supplies and first date furnished; May amend without affecting priority. |
| Warehouse Receipt Holder's Lien (N.D. Cent. Code § 60-02-25.1) | Receipt holders storing, selling, or depositing grain into a warehouse | Grain contained in a warehouse. | None. | Not specified. | Not specified. |
| Agricultural Supplier's Lien (N.D. Cent. Code §§35-31-01 through 35-31-06) | Person who <u>furnishes supplies or services</u> in the production of crops or agricultural products. | The crops and products which were produced by the use of such supplies. | <u>Must send invoice to agricultural crop producer</u> that if amount due is not paid a lien may be filed. | Attaches the date the supplies are furnished | Perfected by <u>filing a statement with the central notice system</u> on or before <u>120 days after the supplies are furnished</u> . Statement must include: (1) name and address of producer; (2) name and address of supplier; (3) description of crop with county and year to be harvested; (4) description of supplies, value and first date furnished; and (5) <u>the social security number or EIN. May amend without affecting priority.</u> |

PRIORITY: 1) Agricultural Processors / Warehouse Receipt Holders and 2) Agricultural Suppliers. Liens of like priority by statute determine their priority by date of filing.

STATUTORY AGRICULTURAL LIENS
STATE OF NORTH DAKOTA
 Livestock

| Statutory Lien | Entitled to Claim | Scope of Lien | Notice Requirements | Attachment | Perfection |
|---|--|---|---|---|--|
| Agister's Lien (N.D. Cent. Code §§35-17-01 through 35-17-08) | A person entrusted by the owner with the care and feeding of an animal | Lien upon the animals which were cared for and fed | Must give notice to all other lienholders within ten days of the receipt of the animals to maintain the lien past the first ten days. | Attaches upon receipt of the animal. | Perfected by filing a statement with the central notice system on or before 90 days after possession. Statement must include: (1) name and address of producer; (2) name and address of person in possession; (3) number and description of livestock; (4) agreed or reasonable price; and (5) the social security number or EIN. May amend without affecting priority. |
| Trespass of livestock lien (N.D. Cent. Code §36-11-16) | Individual upon whose land the livestock trespassed | The livestock which committed the trespass. | None. | Presumably attaches at judgment, but not specified. | Presumably perfected upon judgment, but not specified; the action must be filed in court within 60 days of the trespass. |
| Agricultural Supplier's Lien (N.D. Cent. Code §§35-35-01 through 35-31-06) | A person who furnishes supplies (seed, petroleum products, chemicals, feed, hay, pasturage, veterinary services, or the furnishing of services in the delivery of supplies) used in the production of livestock. | The livestock and their products which were produced by the use of such supplies. | Must give invoice to agricultural livestock producer that if amount due is not paid a lien may be filed. | Attaches the date the supplies are furnished. | Perfected by filing a statement with the central notice system on or before 120 days after the supplies are furnished. Statement must include: (1) name and address of producer; (2) name and address of supplier; (3) description of livestock with county; (4) description of supplies, value and first date furnished; and (5) the social security number or EIN. May amend without affecting priority. |

PRIORITY (N.D. Cent. Code Chapter 35): 1. Agricultural Processor; 2. Agricultural Suppliers; and 3. Agister's Lien. Liens of equivalent priority gain priority over each other by the time of filing (first filed, first priority)

GENERAL COMMENTS: GENERAL COMMENTS: (1) Ag lien must be filed in the State that the growing crops are located. For post-harvested crops, file lien in state crops are being stored. (2) Ag lien is only enforceable as to crops and the identifiable proceeds of the crops. Crop checks deposited and commingled in account are not identifiable. (3) If crop share, the crop production input lien does not attach to the lessor's portion of the crops.

**STATUTORY AGRICULTURAL LIENS
STATE OF MINNESOTA
Crops**

| <u>Statutory Lien</u> | <u>Entitled to Claim</u> | <u>Scope of Lien</u> | <u>Lender Notice Requirement, Lender Response and Failure to Respond</u> | <u>Attachment</u> | <u>Perfection</u> |
|--|--|---|--|---|--|
| Landlord's Lien (MN Stat. §514.964, subd.1) | A person leasing real property for agricultural production | Lien for unpaid rent on the crops produced on the real property in the crop year that is the subject of the lease. | None. | Effective when the crops become growing crops. | Perfected by filing UCC-1 on or before 30 days after the crops become growing crops. |
| Harvester's Lien (MN Stat. §514.964, subd.2) | A person providing combining, picking, harvesting, hauling, baling, drying, or storing services in the ordinary course of business | Lien upon the crops combined, picked, harvested, hauled, baled, dried, or stored, as the case may be, for the reasonable amount and kind of service provided. | None. | Effective upon the services being provided the obligor by the harvester. | Perfected by filing UCC-1 on or before 15 days after the last date harvesting services are provided. |
| Crop Production Input Lien (MN Stat. §514.964, subd.3) | A supplier furnishing crop production inputs in the ordinary course of business | Lien for the unpaid retail cost of the crop production inputs. Attaches to: (1) the existing crops upon the land where a furnished agricultural chemical was applied, or if crops are not planted, to the next production crop within 16 months following the last date on which the agricultural chemical was applied; (2) the crops produced from furnished seed; or (3) the crops produced, harvested, or processed using a furnished petroleum product. | Supplier shall notify lender of intent to supply inputs secured by lien. Notice requires: (1) name/address of lender; (2) name/address of supplier; (3) description of inputs/expected cost; (4) name/address of producer; (5) name/address of owner. Must be sent by certified mail with envelope marked "IMPORTANT-LEGAL NOTICE". | Effective when the crop production inputs are furnished by the supplier to the purchaser. | Perfected by filing UCC-1 within 6 months after the last date crop inputs are provided. |

PRIORITY (MN Stat. §514.964, subd.8): (1) Landlord's Lien; (2) Crop Input Production Lien (for seed costs); (3) Harvester's Lien; (4) Crop Production Input Lien; (5) Bank Security Interest.
GENERAL COMMENTS: (1) Ag lien must be filed in the State that the growing crops are located. For post-harvested crops, file lien in state crops are being stored. (2) Ag lien is only enforceable as to crops and the identifiable proceeds of the crops. Crop checks deposited and commingled in account are not identifiable. (3) If crop share, the crop production input lien does not attach to the lessor's portion of the crops.

**STATUTORY AGRICULTURAL LIENS
STATE OF MINNESOTA
Livestock**

| Statutory Lien | Entitled to Claim | Scope of Lien | Lender Notice Requirement, Lender Response and Failure to Respond | Attachment | Perfection |
|---|--|---|--|--|---|
| Veterinarian Lien (MN Stat. §514.966, subd. 1) | A licensed veterinarian performing emergency veterinary services in the ordinary course of business | Lien upon the animals for the value of the services (one year before the date on which the last item of the veterinary service is performed) | None. | Effective upon the services being provided the obligor by the veterinarian. | Perfected by filing UCC-1 on or before 180 days after the last item of the veterinary service is performed. |
| Feeder's Lien (MN Stat. §514.966, subd. 4) | The person (1) stores, cares for, or contributes to the keeping, feeding, pasturing, or other care of livestock, including medical or surgical treatment and shoeing, and (2) does so in the ordinary course of business, at the request of the owner or legal possessor of the livestock. | Lien upon the livestock for the price or value of the storage, care, or contribution, and for any legal charges against the person to any other person. | None. | Effective when the services or contributions are provided the obligor | Perfected by filing on or before 60 days after the last date that feeding services are furnished. |
| Breeder's Lien (MN Stat. §514.966, subd. 2) | The owner of any livestock used for breeding services in the ordinary course of business, or any provider, in the ordinary course of business, of semen or ova used in fertilizer, artificial insemination, or any other artificial means of impregnating livestock. | Lien upon the livestock bred and any resulting offspring for the price or value of the service provided | None. | Effective when the services are provided the obligor by the breeder. | Perfected by filing UCC-1 within six months after the last date that breeding services are provided the obligor |
| Livestock Production Input Lien (MN Stat. §514.966, subd. 3) | A supplier furnishing livestock production inputs in the ordinary course of business | Lien for the unpaid retail cost of the livestock production input. | Supplier shall notify lender of intent to supply inputs secured by lien. Notice requires: (1) name/address of lender; (2) name/address of supplier; (3) description of inputs/expected cost; (4) name/address of producer; (5) name/address of owner; (6) description/location of livestock. Must be sent by certified mail with envelope marked "IMPORTANT-LEGAL NOTICE". | Effective when the agricultural production inputs are furnished by the supplier to the purchaser | Perfected by filing UCC-1 within six months after the last date that livestock production inputs are furnished. |

PRIORITY (MN Stat. §514.966, subd. 8): (1) Veterinarian Lien; (2) Feeder's Lien; (3) Breeder's Lien; (4) Livestock Production Input Lien and (5) Perfected Bank Security Interest.
GENERAL COMMENTS: (1) Ag lien must be filed in the State that the livestock is located. (2) Ag lien is only enforceable as to livestock and the identifiable proceeds of the livestock. Livestock checks deposited and commingled in deposit account are not identifiable.

Agricultural Supplier Lien Cases

North Dakota agricultural supplier lien limited to feed. Chapter 13 Debtor disputed a lien creditor's claim under the North Dakota agricultural supplier's lien for unpaid certain hay, straw, barn repairs and the use of equipment. The North Dakota statute provides a statutory lien to any person who furnishes "supplies" used in the production of livestock so long as the person entitled to the lien files a verified statement with an authorized governmental agent within 120 days after the supplies are furnished. The lien was properly perfected. The Court held that the term "supplies" includes hay and straw, but not barn repairs and the use of equipment. *In re Voss*, 426 B.R. 326 (Bankr. D. Mont. 2010).

North Dakota agricultural supplier lien includes young stock. William Poultry supplied poult (young turkeys) to debtor on credit. Debtor defaults. Poults supplier files North Dakota feed supplier lien. North Dakota statute allows for a lien "for any person who furnishes supplies used in the production of livestock [or crops] As used in this chapter, the term "supplies" includes seed, petroleum products, fertilizer, farm chemicals, insecticide, feed hay, pasturage, veterinary services, or the furnishing of services in delivering or applying the supplies." N.D. Cent. Code §§ 35-31-01. The Court held that poults are "supplies" of livestock operation since the term "supplies" is not limited to the defined inputs. *Great Western Bank v. William Poultry*, 780 N.W.2d 437 (N.D. March 23, 2010).

Minnesota supplier of feed and other related services is limited to a livestock production lien. The feed supplier Wilmont-Adrian Cooperative supplied feed and provided nutritional analysis and custom nutrition plans to the hog producer Profit Pork. New Vision Coop only supplied feed to the hog producer. The hog producer went insolvent and the feed suppliers asserted various statutory liens against certain proceeds from the sale of hogs. Wilmont-Adrian Cooperative argued that it was entitled to a higher priority feeder's lien under Minnesota law because the Minnesota feeder's lien included any one that "stores, cares for, or contributed to the keeping, feeding... or other care of livestock." The Court held implied that a lien claimant may only be entitled to one lien category and to be eligible for the feeder's lien the supplier must directly care for or contribute to the feeding of the livestock. Because the livestock input lien was more applicable to the goods and services provided by Wilmont-Adrian Cooperative, the Court held that it was not also entitled to the high priority feeder's lien. *First Nat'l Bank v. Profit Pork, LLC*, 820 N.W.2d 592, 2012 Minn. App. LEXIS 96 (Minn. Ct. App. 2012).

Minnesota feed supplier lien requires strict compliance. New Vision Coop supplied feed to Chad Arends. New Vision gave notice to the Article 9 secured lender Minnwest Bank of its intent to supply feed, but the envelope that the notice was mailed in failed to state "IMPORTANT – LEGAL NOTICE." The Minnesota Court of Appeal held that the feed supplier must strictly comply with the statute; meaning the input supplier must actually comply with each requirement of the statute, including that the envelope must be marked "IMPORTANT – LEGAL NOTICE." See *MinnWest v. Chadley Arends, et al.*, 802 N.W. 2d 412 (Minn. App. 2011).

Hypotheticals:

Hypothetical 1:

- John and Mary Peterson own and farm 1,500 acres in North Dakota (Grand Forks County).
- John and Mary Peterson use “Small Bank” for its operating line of credit. Small Bank files a UCC-1 in the State of North Dakota.
- From April 15, 2007 to May 15, 2017, John and Mary Peterson purchase \$50,000 worth of crop inputs from “Crop Supply, Inc.”
- Crop Supply, Inc. files UCC-1 in North Dakota in June 2017. John and Mary Peterson don’t pay Crop Supply, Inc.
- **Who has the priority lien?**

Hypothetical 2:

- John and Mary Jones own and farm 2,000 acres in Minnesota (Polk County).
- John and Mary Jones use “Medium Bank” for its operating line of credit. Medium Bank
- From April 15, 2007 to May 15, 2017, John and Mary Peterson purchase \$75,000 worth of crop inputs from Crop Supply, Inc.
- Crop Supply, Inc. files UCC-1 in Minnesota in June 2017. John and Mary Peterson don’t pay Crop Supply, Inc.
- **Who has the priority lien?**

Hypothetical 3:

- John and Mary Smith own 1,500 acres in North Dakota (Grand Forks County) and 2,000 acres in Minnesota (Polk County). John and Mary Smith live in North Dakota.
- John and Mary Smith use an operating entity “Smith, LLC” registered in the State of Minnesota to farm the cropland.
- Smith, LLC uses “Big Bank” for its operating line of credit. Big Bank files a UCC-1 in the state of Minnesota.
- On March 1, 2007, Crop Supply, Inc. gives written notice to Big Bank. Big Bank responds to the notice within the 10 days.
- From April 15, 2007 to May 15, 2017, Smith, LLC purchases \$100,000 worth of crop inputs from Crop Supply, Inc. \$75,000 in inputs applied in ND. \$25,000 applied in MN.
- Crop Supply, Inc. files UCC-1 in North Dakota in June 2017. Smith, LLC doesn’t pay Crop Supply, Inc.
- **Who has the priority lien?**

Best Practices:

1) Know your customer.

- Is the customer farming as an individual or as an operating entity? If an operating entity, what state is the customer incorporation or organized?
- Has the proper person or operating entity signed the credit application?
- Does the customer have an operating line of credit and/or use other crop input suppliers?
- Does the customer feed livestock.
- Check the UCC-1 filings in the state that the customer lives (if an individual) or registered (if a legal entity) and the state the crops will be grown in to see if you need to give any notices (MN).

2) What does your credit application say?

- Should allow you to make immediate demand for payment.
- Consider provision that grants you a blanket security interest in all “crops” and “accounts” of the farmer and authorizes you to file a UCC-1.
- Consider requiring a statement of assets, liabilities and net worth.
- Require the social security number (if an individual) or taxpayer identification number (if a legal entity) (ND)

3) Need to take extra step in Minnesota. For crops grown in Minnesota, give the written notice to the lender (and wait the 10 days) before supplying crop inputs on credit. Keep a copy of the written notice and the envelope the notice was sent in your file.

4) As supplies are being provided, document the state, county and which fields the crop inputs are being provided or applied.

5) File the lien after the last goods/services have been provided.

6) Do not wait to start your collection action. Start the collection action before harvest. The longer you wait the greater chance the crop will have been sold and the crop proceeds commingled in their operating account or used to pay other creditors.

7) Document everything.