

REVISED ARTICLE 9 AND AGRICULTURAL LIENS:
AN IOWA PERSPECTIVE

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I. INTRODUCTION

As production agriculture becomes more and more difficult for farmers, ranchers, landowners, and agri-businesses to remain profitable, these players in the agricultural community are attempting to find ways to invest money, sell agricultural products, and produce commodities in ways to at least lessen their risk. One common means farmers and ranchers use to reduce their risks is entering into production contracts to raise pigs, feed cattle, or grow specialty crops for larger companies such as Smithfield Foods or Cargill.¹ Farm land owners may try to reduce their risk by cash leasing their land to tenants rather than crop-share leasing. The hope for the farmers feeding animals or growing crops on contract

1. NEIL D. HAMILTON, A FARMER’S LEGAL GUIDE TO PRODUCTION CONTRACTS 5 (Farm Journal, Inc. 1995).

is that they will receive a fixed payment or a premium on the commodities the farmers are feeding or growing for the Cargills or Smithfields of the world.² The land owners hope to also receive a fixed payment per acre with the cash rent system as opposed to exposing their financial return to the weather or grain markets with a crop-share lease system.

As for the agri-businesses, while they may not be lessening their risk, they do try to sell more products in ways that appeal to the farmers or ranchers who are strapped with financial troubles. Often times, these agri-businesses will allow the farmers or ranchers to purchase the feed, seed, or chemicals on credit so the farmers or ranchers can pay for the goods over a period of time rather than up front.

But what happens when a farmer growing crops or feeding animals on contract for a larger company does not get paid for his or her services? Or what if a landowner does not get paid the rent due to him or her? And what if an agri-business does not get paid for the seed, feed, or chemicals that a farmer or rancher purchased on credit?

These situations are precisely why statutory agricultural liens were created.³ Typically, these situations of non-payment occur in times of financial and economic difficulty for the agricultural community.⁴ A majority of the statutory agricultural liens were created during the years of the depression in the 1930s and the years of the farm crisis in the 1980s.⁵ The purpose of agricultural liens is to give landlords, farmers, agri-businesses, and other similarly situated parties protection and rights to payment just as banks, mortgagors, and other secured creditors have protection.⁶ However, the system to ensure that landlords, farmers, and agri-businesses, among others, are entitled to the protection the agricultural liens were designed to provide has changed in the past few years with the revision to Article 9 of the Uniform Commercial Code.⁷

2. *Id.* at 3.

3. Keith G. Meyer, *Should the Unique Treatment of Agricultural Liens Continue?*, 24 IND. L. REV. 1315, 1315 (1991).

4. *Id.*

5. *Id.*

6. *Id.*

7. *Revised Article 9 – Agricultural Issues Effective July 1, 2001*, AGRIC. L. NEWS LETTER (Iowa State Bar Ass'n, Des Moines, Iowa), June 22, 2001, at 1 [hereinafter *Revised Article 9 – Agricultural Issues*]; see generally Jason Finch, *The Making of Article 9 Section 9-312(2) Into Model Provision Section 9-324A: The Production Money Security Interest: Finally a Sensible "Superpriority" for Crop Finance*, 5 DRAKE J. AGRIC. L. 381 (2000).

This note addresses certain changes to some common agricultural liens due to the revision to Article 9. The focus of this note is primarily on Iowa agricultural liens, but since other states have adopted Revised Article 9, the application and changes should have similar effects to agricultural liens of all states.

II. AGRICULTURAL STATUTORY LIENS

The revision to Article 9 brought agricultural liens within the same scope and treatment as other security interests and liens under Article 9.⁸ By doing so, agricultural liens are subject to the filing and perfection requirements contained in Revised Article 9.⁹ Revised Article 9 defines an agricultural lien as:

An interest, other than a security interest, in farm products:

(A) which secures payment or performance of an obligation for:

- (i) goods or services furnished in connection with a debtor's farming operation; or
- (ii) rent on real property leased by a debtor in connection with its farming operation;

(B) which is created by statute in favor of a person that:

- (i) in the ordinary course of its business furnished goods or services to a debtor in connection with a debtor's farming operation; or
- (ii) leased real property to a debtor in connection with the debtor's farming operation; and

(C) whose effectiveness does not depend on the person's possession of the personal property.¹⁰

Two important clauses in the definition of an agricultural lien are "other than a security interest" and "in farm products." An agricultural lien is not a security interest, so there is some difference in treatment between the two. Also, an agricultural lien is limited to farm products. Farm products are defined as:

Goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are:

(A) crops grown, growing, or to be grown, including:

8. U.C.C. § 9-109(a) (2002).
 9. *Id.* §§ 9-308, 9-310.
 10. *Id.* § 9-102(a)(5).

- (i) crops produced on trees, vines, and bushes; and
- (ii) aquatic goods produced in aquacultural operations;
- (B) livestock, born or unborn, including aquatic goods produced in aquacultural operations;
- (C) supplies used or produced in a farming operation; or
- (D) products of crops or livestock in their unmanufactured states.¹¹

Notice that the debtor must be engaged in a farming operation. Revised Article 9 provides a broad definition for farming operation as “raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.”¹² Comment 4 to section 9-102 provides further clarification to the farm products definition.¹³ The comment states that once a debtor ceases to be engaged in farming operations with respect to the farm products, the crops or livestock are no longer considered farm products and the agricultural lien would no longer apply to the crops or livestock.¹⁴ As the comment further states, an example of this would be when the crops or livestock are in the possession of a manufacturer or processor.¹⁵ At this point, they become inventory of the manufacturer or processor.¹⁶

Another trouble spot in the farm products definition could be the “unmanufactured states” requirement of the crops or livestock. Again, comment 4 provides some clarification. It appears that if the manufacturing process is “so closely connected” with the farming operation that the resulting products would not be considered manufactured, they would still be considered under the definition of a farm product.¹⁷ The clear example of this is pasteurizing milk, but a cloudier example might be converting corn into feed for the farmer’s livestock.¹⁸ Just because the feed stays in the possession of the farmer does not mean it would still be considered a farm product. The comments state that once the products are subjected to the manufacturing process, they lose their status as farm products even though they stay in the possession of the same debtor.¹⁹

11. *Id.* § 9-102(34).
12. *Id.* § 9-102(35).
13. *See id.* § 9-102, cmt. 4.
14. *Id.*
15. *Id.*
16. *Id.*
17. *Id.*
18. *Id.*
19. *Id.*

One distinct difference between an agricultural lien and a security interest comes up in the proceeds of the crops or livestock. Section 9-315(a)(2) states that the general rule for proceeds is that the “security interest attaches to any identifiable proceeds of collateral.”²⁰ However, the subsection does not include the same treatment for agricultural liens since it fails to mention agricultural liens.²¹ Instead, one must look to the specific state statute creating the agricultural lien to find if a lien holder may go after the proceeds of the farm products. An example of a state statute attaching the lien holder’s interest to the proceeds is Iowa’s Custom Cattle Feedlot Lien.²²

Another important area distinguishing security interests and agricultural liens is section 9-302. This section states that the law of the particular state where the *farm products are located* governs perfection.²³ To be protected, a lien holder should perfect in surrounding states if there is risk that the farm products may end up in the neighboring state. This is in contrast to a security interest, in which case the state where the debtor is located governs the perfection of the security interest.²⁴

Most states have several liens that qualify as agricultural liens protecting various types of creditors “involved in the production or financing of agricultural products.”²⁵ These agricultural statutory liens are treated differently than other liens or security interests.²⁶ Before Revised Article 9, agricultural statutory liens were created by operation of law because of a creditor’s status rather than by any filing or perfection on the part of the creditor.²⁷ Essentially, the individual or entity holding an agricultural lien automatically had priority over another creditor who did not fall into the special status no matter which creditor was secured first.²⁸ This difference was primarily due to the fact that original Article 9 did not apply to agricultural statutory liens.²⁹

This process of giving the agricultural statutory liens priority regardless of filing or perfection did not allow creditors who were ineligible for the agricul-

20. *Id.* § 9-315(a)(2).

21. *Id.*

22. IOWA CODE § 579A (2003).

23. U.C.C. § 9-302 (2002).

24. *Id.* § 9-301(1).

25. Meyer, *supra* note 3, at 1315.

26. *See id.* at 1317.

27. *Id.* at 1318-19.

28. *Id.* at 1318.

29. U.C.C. § 9-109, cmt. 3 (2002) (stating that the original Article 9 did not apply to agricultural liens).

tural liens, such as banks, to know of some “secret liens” that could be levied on the collateral but that were not publicly filed.³⁰ This uncertainty led to litigation between the ineligible creditors, the lienholders, and the debtors to determine who had priority and was to be paid first.³¹ The revision to Article 9 included filing and perfection requirements for agricultural lienholders.³² The intent of these new requirements was to eliminate some of this uncertainty.³³

A. *Iowa Agricultural Liens*

There are seven statutory liens in Iowa that qualify as agricultural liens.³⁴ These are the Landlord’s Lien,³⁵ the Custom Cattle Feedlot Lien,³⁶ the Commodity Production Contract Lien,³⁷ the Agricultural Supply Dealer’s Lien,³⁸ the Thresher’s or Cornsheller’s Lien,³⁹ the Lien for Services of Animals,⁴⁰ and the Veterinarian’s Lien.⁴¹ Though this note focuses mostly on Landlord’s Lien, the Custom Cattle Feedlot Lien, and the Commodity Production Contract Lien, it should be noted that when talking about agricultural liens, all are included. A Lien for Care of Stock⁴² does not qualify as an agricultural lien because it is only good while the lienholder has the stock under his or her possession.⁴³

1. *Landlord’s Lien*

Generally, Revised Article 9 excludes landlord’s liens, unless they fit the description of an agricultural lien.⁴⁴ However, as applied to renting farmland, the

30. IOWA BANKERS ASS’N, IOWA AGRICULTURAL LIEN ISSUES 1, *available at* <http://www.extension.iastate.edu/feci/lien/IBAaglien.pdf> (last visited Apr. 5, 2003).

31. *Id.*

32. *Id.*

33. *Id.*

34. See Eldon McAfee, *Revised Article 9 – Agricultural Financing*, AGRIC. L. NEWSL. (Iowa State Bar Ass’n Agric. L. Section, Des Moines, Iowa), June 22, 2001, at 4.

35. IOWA CODE § 570 (2003).

36. *Id.* § 579A.

37. *Id.* § 579B.

38. *Id.* § 570A.

39. *Id.* § 571.

40. *Id.* § 580.

41. *Id.* § 581.

42. *Id.* § 579.

43. McAfee, *supra* note 34, at 4.

44. See U.C.C. § 9-109(d)(1) (2002).

landlord's lien falls under the definition of an agricultural lien since its purpose is to "secure[] payment or performance of an obligation for . . . rent on real property leased by a debtor in connection with its farming operation."⁴⁵ As such, the landlord's lien is the oldest of the agricultural liens. Its inception began in the 1843 Revised Statutes of the territory of Iowa.⁴⁶ There have been various amendments to the statutory language with the latest and perhaps most significant change coming from the 2000 legislature.⁴⁷ The effect of the lien is to allow the landlord to collect rent due from the tenant in the event the tenant would not pay the rent.⁴⁸ The lien extends to the crops grown on the rented farm and to any other personal property owned by the tenant that has been used or kept on the rented farm and is not exempt for some other reason.⁴⁹

2. *Custom Cattle Feedlot Lien*

The Custom Cattle Feedlot Lien was enacted in 1995.⁵⁰ This lien attaches not only to the cattle, but also to "any identifiable cash proceeds from the sale of the cattle."⁵¹ The apparent intent of the legislature was to give custom feedlot operators the protection afforded other secured creditors financing cattle operations.⁵² Prior to the enactment of the Custom Cattle Feedlot Lien, a feedlot operator had protection under the Lien for Care of Stock and Storage of Boats and Motor Vehicles, but the lien was "subject to all prior liens of record."⁵³ This wording led to the typical priority disputes that other security interests and liens encounter.

The new requirements in the Custom Cattle Feedlot Lien help to make sure that the confusion over priority, possession, and the construction of the statute is eliminated.⁵⁴ This lien differs from the landlord's lien, prior to the changes of the 2000 legislature, because there are time requirements and filing require-

45. *Id.* § 9-102(a)(5).

46. IOWA TERRITORY REV. STAT., ch. 87, § 14 (1843), reprinted in 1911 (Iowa).

47. *Id.*

48. IOWA CODE § 570.1 (2003).

49. *Id.*

50. IOWA CODE ANN. § 579A.1 (West 2001).

51. *Id.* § 579A.2.

52. 1995 Iowa Acts 59, §§ 2-4.

53. IOWA CODE § 579.1 (1992).

54. *See* IOWA CODE § 579A.2 (2003) (setting forth the requirements to perfect a custom cattle feedlot lien and the priority of the lien).

ments associated with the Custom Cattle Feedlot Lien.⁵⁵ While there are adequate requirements in the lien, the developments in the past couple years of the Missouri cattleman and his cattle enterprise that left hundreds of investors with collective losses of nearly two hundred million dollars may bring up unforeseen issues that could test the actual adequacy of the lien.⁵⁶

3. *Commodity Production Contract Lien*

The Commodity Production Contract Lien is designed to protect farmers that are growing grain or feeding animals or poultry under contract with another entity.⁵⁷ This statute was enacted by the Iowa legislature in 1999.⁵⁸ Iowa, as well as the rest of the country, has succumbed to the mass expansion of contract production in agriculture.⁵⁹ The areas of agriculture most notably affected by this contract production are poultry, swine, and specialty corn and soybean crops.⁶⁰ To illustrate, in 1980 only two percent of the nation's swine production was done under any type of contract.⁶¹ By 1994, over twenty percent of the swine production in the United States was done under a contract.⁶² One can guess that given the fluctuating swine and grain markets, there are no doubt many more hogs and crops produced under contract now than there were in 1994.

The Commodity Production Contract Lien was enacted to protect payment of these contract growers if the entities owning the pigs or grains failed to pay the farmers for any number of reasons.⁶³ The lien attaches to the commodity produced by the farmer under contract or to the proceeds received from a sale of the commodity.⁶⁴ In some situations, the lien attaches to any property, which may be subject to a security interest, that is owned by the entity contracting with

55. *See id.* § 579A.2(3) (stating that a financing statement must be filed within twenty days of arrival of the cattle).

56. Anne Fitzgerald, *Young Banked on Trust*, DES MOINES REG., Sept. 16, 2001, at 1D.

57. *See* IOWA CODE § 579B.2 (2003) (stating the lien depends on production contracts for commodities).

58. 1999 Iowa Acts 169.

59. *See* HAMILTON, *supra* note 1, at 5 (stating that "American agriculture has seen a rapid increase in production contracting").

60. *Id.*

61. *Id.*

62. *Id.*

63. IOWA CODE § 579B.2 (2003).

64. *Id.*

the farmer.⁶⁵ The farmer is then able to be paid for his services through the property or proceeds to which the lien attaches.⁶⁶ This lien is like the Custom Cattle Feedlot Lien in that there are specific filing requirements that must be followed to ensure farmers the protections intended by the statute.⁶⁷

4. *Agricultural Supply Dealer's Lien*

An agricultural supply dealer is “a person engaged in the retail sale of agricultural chemicals, seed, feed, or petroleum products used for an agricultural purpose.”⁶⁸ An agricultural purpose is basically traditional farming of hogs, cattle, corn, and soybeans, but can extend all the way to raising bees or shellfish.⁶⁹

The Agricultural Supply Dealer's Lien was enacted in the heart of the farm crisis of the 1980s.⁷⁰ The intent of the lien was to secure payment to the agribusinesses selling supplies to farmers who were suffering one of the worst financial crises since the years of the depression.⁷¹

Although the intent was to protect the dealers, the legislature showed their concern for the financial situation of most farmers and lenders at the time by requiring more notice and filing requirements than had been previously required by agricultural liens.⁷² Provided the dealer files and perfects the lien correctly and notifies other appropriate creditors, the lien attaches to all crops or livestock that the seeds, chemicals, or feed were used to produce and to the proceeds of these crops or livestock.⁷³

B. *Other States' Agricultural Liens*

Almost every state has some type of agricultural lien.⁷⁴ As of 1993, forty-six of the fifty states had an agricultural lien.⁷⁵ If nothing else, this wide

65. *Id.* § 579B.3(4).

66. *Id.* § 579B.5.

67. *See id.* § 579B.4.

68. *Id.* § 570A.1(3).

69. *Id.* § 570A.1(2).

70. IOWA CODE ANN. § 570A (West 1992) (*see* “Historical & Statutory Notes”).

71. 1984 Iowa Acts 1072, §§ 1-11.

72. IOWA CODE § 570A.2-.4 (2003).

73. IOWA CODE ANN. § 570A.2-.4 (West 2003).

74. *See generally* Meyer, *supra* note 3.

75. *See generally* MARTHA L. NOBLE, NAT'L CTR. AGRIC. L. RESEARCH & INFO., STATUTORY AGRICULTURAL LIENS RAPID FINDER CHARTS (1993) (providing information on the

usage of agricultural liens shows the importance of protecting the various lienholders in both agricultural and non-agricultural states.

In addition, the types of agricultural liens vary in the nature of protection as well as the specificity of the lien.⁷⁶ For example, both Kansas and California have a lien for the treatment of cattle by a veterinarian.⁷⁷ However, the Kansas lien is aptly named a Veterinarian's Lien and covers generally all types of treatment done by the veterinarian,⁷⁸ whereas California has a Bovine Brucellosis Treatment Lien specifically for treatment of Brucellosis in dairy cattle.⁷⁹

Another example is the difference between liens in Iowa and South Dakota. While Iowa has the Commodity Production Contract Lien⁸⁰, South Dakota does not have such a lien or even a similar lien.⁸¹ If a farmer in Iowa raised pigs on contract for a company in South Dakota and the pigs were shipped over to South Dakota to be sold, how would the farmer maintain his protection if South Dakota does not have a lien like Iowa's?

These illustrations show the lack of uniformity between the states with regards to the agricultural statutory liens and shows the potential for disputes between the lienholders and the debtors in different states.⁸² While the intent of Revised Article 9 was to create uniformity among the states in terms of filing and perfection to determine the priority of the secured party or lienholder,⁸³ the differences among the types of agricultural liens will be determined by the states and interpreted by the appropriate courts should such disputes arise.⁸⁴

main provisions of every states' statutory agricultural liens).

76. *See id.* at i (stating that statutory provisions vary among the states).

77. *Id.* California part at 1-2, Kansas part at 2.

78. *Id.* Kansas part at 2.

79. *Id.* California part at 1-2, Kansas part at 2.

80. IOWA CODE § 579B.3 (2003).

81. *See* NOBLE, *supra* note 75, South Dakota part.

82. Meyer, *supra* note 3, at 1315.

83. IOWA BANKERS ASS'N, *supra* note 30.

84. *See* NOBLE, *supra* note 75, at i (stating that the courts continue to interpret statutory liens).

III. INDIVIDUALS AND ENTITIES AFFECTED AND PROTECTED BY AGRICULTURAL LIENS

Agricultural statutory liens have been the cause of much confusion for those involved in agricultural financing.⁸⁵ The cause for this confusion has largely been due to the widely adopted policy of protecting the American farmer regarding various forms of financing farming operations.⁸⁶ Farming in America is not only a business, it is a way of life.⁸⁷ Since the 1920s and the Great Depression, efforts have been made to protect farmers because they are dependent on so many factors outside their control and because they are often viewed as having less sophistication and power than other types of business men and women.⁸⁸

For these reasons, a large part of agricultural financing – the agricultural lien – was enacted and purposely treated differently than other types of liens and security interests.⁸⁹ Nearly all other security interests were included and governed by old Article 9.⁹⁰ However, liens on agricultural commodities were outside the scope of old Article 9.⁹¹

The effect of the agricultural liens falling outside the scope of old Article 9 was that such liens were not put to the same notification requirements as other security interests.⁹² Without the benefit of notification, the parties subject to the notification requirements were at a disadvantage to those who were not subject to the notification requirements.⁹³ The main reason for this disadvantage is that the agricultural lien holders had what is known as a “superpriority” over all other security interests.⁹⁴ With a superpriority, if a debtor defaults on a loan, the secured creditor that went to all the work of filing and perfecting the security inter-

85. See Donald W. Baker, *Some Thoughts on Agricultural Liens Under the New U.C.C. Article 9*, 51 ALA. L. REV. 1417, 1417-18 (2000).

86. See *id.* at 1417.

87. See Steven C. Bahls, *Preservation of Family Farms: The Way Ahead*, 45 DRAKE L. REV. 311, 322-27 (1997).

88. See Baker, *supra* note 85, at 1417.

89. See *id.* at 1422.

90. See RUSSELL A. HAKES, ABCS OF THE UCC: ARTICLE 9: SECURED TRANSACTIONS 3 (Amelia H. Boss ed. 1996).

91. Meyer, *supra* note 3, at 1320.

92. See Baker, *supra* note 85, at 1423-24.

93. See Finch, *supra* note 7, at 392.

94. See *id.* at 393.

est on the loan could suffer because an agricultural lien holder could exist and have higher priority than the secured creditor.⁹⁵

This whole event of the secured creditor not having notification is referred to as a secret lien.⁹⁶ It is secret because few, if any, other secured creditors knew about the lien. These so called secret liens were the primary reason for the changes brought about by Revised Article 9.⁹⁷ State legislatures were largely to blame for these secret liens because state statutes created the agricultural liens.⁹⁸ Perhaps the most significant change made by Revised Article 9 was bringing these state-created statutes under the scope of Article 9.⁹⁹

The parties affected the most by the secret liens were the traditional farm lenders, such as banks and insurance companies.¹⁰⁰ Naturally, the banks were probably reluctant to lend to a marginal farm customer if the banks could not even find out all the potential claimants to the customer's collateral, should the customer suffer an economic downturn of some type. By bringing the agricultural liens into Revised Article 9, much of this problem for the lenders has been alleviated.¹⁰¹

The way that Revised Article 9 helps lenders is by requiring agricultural liens to be filed with a state office in order to become effective.¹⁰² The state still is the ultimate authority on what the agricultural lien can do, the types of people it protects, the types of collateral the lien can attach to, and the extent of protection provided by the lien. Revised Article 9, however, governs when the lien becomes effective.¹⁰³ Filing alone is a step in the right direction for those in the lender's shoes when it comes to having more notice of potential lien holders on a farm customer's property, but another benefit that Revised Article 9 created was the requirement of central filing.¹⁰⁴ Where local filing used to be enough to perfect a lien or secured interest of some types, with Revised Article 9, such local filing is not adequate to perfect.¹⁰⁵

95. *See id.*

96. *See Baker, supra* note 85, at 1423.

97. *See Linda J. Rusch, Farm Financing Under Revised Article 9*, 73 AM. BANKR. L.J. 211, 213 (1999).

98. *See Baker, supra* note 85, at 1417-21.

99. *See* U.C.C. § 9-109 (2002).

100. *See Rusch, supra* note 97, at 211.

101. *See id.* at 212.

102. *See* U.C.C. § 9-501 (2002).

103. IOWA BANKERS ASS'N, *supra* note 30.

104. *See* U.C.C. § 9-501 (2002).

105. *See Harry C. Sigman, The Filing System Under Revised Article 9*, 73 AM. BANKR.

As is often the case, one side's victory is the other side's loss. Farmers and agricultural lien holders are in a worse position in some ways because of this filing requirement. While the agricultural lien can still be the first in line if the state statute provides, a lien holder must file for the lien to become effective, which is something that many lien holders did not have to do in the past.¹⁰⁶ Many in the lien holder's camp argue that not enough was done to notify them of the changes the revision caused.¹⁰⁷ The recent Missouri cattleman case shows that often times it is only when a crisis hits that an effort is made to notify farmers of potential protections the liens could offer.¹⁰⁸ Of course, farmers and farm businessmen have made such deals on a handshake for years, so one could also argue that nothing would change either way.¹⁰⁹ Another argument for the lien holder's side is that by extending these requirements to creditors that previously did not have to file, such as landlords or agricultural supply dealers, such creditors may become wary of extending credit to the marginal and often younger farmer. However, the same argument could be made for the other side that with the increased access to information, traditional lenders will be more willing to lend to these types of farm customers.

Revised Article 9 does leave state legislatures with an "opt out" provision that gives the states power to grant the super priority of an agricultural lien by amending the version of Revised Article 9 that the state adopts.¹¹⁰ However, the political pressure from banks and other secured parties would no doubt be heavy, given the fact that those involved with the revision process felt the priority system a big enough issue to make such a major change to Article 9.¹¹¹ In addition to the political pressure, other states may not look kindly on such a change because of the vast quantity of interstate business that takes place.¹¹² Such a change in one state could very easily have ramifications in many other states.¹¹³

L.J. 61, 63 (1999).

106. U.C.C. § 9-322(g) (2002); *see also* Baker, *supra* note 85, at 1450-55.

107. *See* Baker, *supra* note 85, at 1453.

108. *See* Sarah Muirhead, *Iowa AG Calls Into Question Cattle Feeding Arrangement*, FEEDSTUFFS, Aug. 27, 2001, at 1.

109. *See* Editorial, *Honor Loses to Suspicion*, OMAHA WORLD-HERALD, Sept. 3, 2001, at 6B.

110. *See* U.C.C. § 9-322(g) (2002).

111. Baker, *supra* note 85, at 1454.

112. *See id.* at 1455.

113. *See id.*

IV. CHANGES TO IOWA'S AGRICULTURAL LIEN SYSTEM

Iowa, along with all the other states, adopted the revised version of Article 9 of the Uniform Commercial Code.¹¹⁴ By adopting the revision, Iowa's agricultural liens are now subject to the enforcement of Revised Article 9, but Iowa, as with other states, still maintains its control over the content of the agricultural statutory liens.¹¹⁵ The most significant changes occur with the Landlord Lien,¹¹⁶ the Custom Cattle Feedlot Lien,¹¹⁷ and the Commodity Production Contract Lien.¹¹⁸ Since Revised Article 9 applies to all agricultural liens,¹¹⁹ liens such as the Agricultural Supply Dealer's Lien,¹²⁰ the Thresher's or Cornsheller's Lien,¹²¹ the Lien for Services of Animals,¹²² and the Veterinarian's Lien¹²³ all changed in the way they now must be perfected, but I have chosen to focus on the first three since they seem to have been the most impacted beyond the new filing requirements.

A. *Landlord's Lien*

Perhaps the change that affected the largest number of people was the requirement that landlords who rent out their farm land must file a financing statement with the Iowa Secretary of State.¹²⁴ The Secretary of State's office is the place for central filing in Iowa, pursuant to the Revised Article 9 central filing requirement.¹²⁵

Before the filing requirement of Revised Article 9, a landlord automatically had priority over other liens on the collateral and personal property of the farmer renting the farm ground owned by the landlord.¹²⁶ The only way the land-

114. 1 Secured Transactions Guide (CCH) ¶ 4991 (Apr. 9, 2002).

115. IOWA BANKERS ASS'N, *supra* note 30.

116. *See* IOWA CODE § 570.1-570.10 (2003).

117. *See id.* § 579A.1-.5.

118. *Id.* § 579B.1-.7.

119. *See* U.C.C. § 9-109 (2002).

120. *See* IOWA CODE § 570A.1-.11 (2003).

121. *See id.* § 571.1-.6.

122. *See id.* § 580.1-.9.

123. *See id.* § 581.4.

124. *See* Uniform Commercial Code – Secured Transactions, 2000 Iowa Acts 1149 §§ 1-136 (to be codified at IOWA CODE § 554.9101-.9710).

125. *See* Sigman, *supra* note 105, at 62-63.

126. *See* IOWA CODE § 570.1-.10 (2003).

lord did not enjoy this priority was if the farmer tenant entered into bankruptcy.¹²⁷ This type of landlord's lien is common in other farm states as well.¹²⁸ As discussed earlier, this was a type of secret lien that Revised Article 9 sought to change.¹²⁹

The reason for the level of magnitude associated with this change is that nearly sixty percent of Iowa's farmers were affected by the change.¹³⁰ Unfortunately, many of the farmers did not learn of the change until it was nearly too late – that is, after the law went into effect on July 1, 2001.¹³¹ This lack of knowledge seems to be mostly due to the fact that during the spring and summer, most of the news sources that usually gave this type of notice were more concerned with the changes being proposed to the federal estate tax.¹³² The change to the estate tax affected a far lesser number of Iowa farmers – about one percent altogether – than the changes to the Landlord's Lien statute.¹³³

If the landlord missed the July 1, 2001 filing date deadline, the best he or she could do was to persuade the farm tenant to agree to terminate the existing lease and enter a new lease.¹³⁴ Once the new lease had been entered, the landlord could then file and attain the same priority level over other secured creditors.¹³⁵

For the 2002 crop year and subsequent years, the financing statement must be filed within twenty days of the tenant taking possession of the rented farm ground.¹³⁶ Since most farm tenancies begin on March 1st in Iowa, a rule of thumb would be for the financing statement to be filed by March 20th of each year.¹³⁷ As with most filing matters, a good practice is to file early since the statute allows the landlord to do so.¹³⁸

The Secretary of State's Office gives the proper form and requirements for filing the financing statement in Iowa.¹³⁹ The form is referred to as the

127. See IOWA STATE UNIV. EXTENSION, FARM ECON.: CURRENT ISSUES: LIENS & CONTRACTS, available at <http://www.extension.iastate.edu/feci/lien> (last visited Apr. 1, 2003).

128. See *id.*

129. See Baker, *supra* note 85, at 1423.

130. See IOWA STATE UNIV. EXTENSION, *supra* note 127.

131. See *id.*

132. See *id.*

133. See *id.*

134. McAfee, *supra* note 34, at 13.

135. *Id.*

136. See IOWA CODE § 570.1 (2003).

137. McAfee, *supra* note 34, at 13.

138. See IOWA CODE § 570.1 (2003).

139. See IOWA SEC'Y OF STATE, LANDLORD'S LIEN LAW CHANGED, at <http://www.sos.state.ia.us/business/landlordlien.html> (last visited Apr. 2, 2003).

“UCC-1 Financing Statement” form and must contain a statement that the UCC-1 is being filed for the purpose of perfecting a landlord’s lien.¹⁴⁰

Even if the landlord follows the requirements of filing on time in the Secretary of State’s Office, a question may arise as to what the lien attaches to. As stated earlier, state law governs what the lien attaches to, but Revised Article 9 governs whether the lien is perfected.¹⁴¹ Therefore, according to the Iowa statute, the landlord’s lien attaches to “crops grown upon the leased premises, and upon any other personal property of the tenant which has been used or kept [on the leased property] and which is not exempt from execution.”¹⁴² Unlike other agricultural liens, the landlord lien does not explicitly provide that the lien attaches to proceeds of the crops.¹⁴³ However, a 1988 Iowa Supreme Court case explains that the lien does in fact attach to the proceeds.¹⁴⁴

Another question becomes what happens if the harvested grain crosses into another state? Does the landlord’s lien travel with the grain across state borders or does the landlord need to file in the other state to be fully protected? Iowa Code section 554.9302 provides that “[w]hile farm products are located in a jurisdiction, the local law of that jurisdiction governs perfection.”¹⁴⁵ This differs from the law related to security interests, which provides that where the debtor (in this case, the farm tenant) is located, the law of that jurisdiction governs.¹⁴⁶ Because of this difference between the two statutes, it appears that the landlord lien needs to be perfected in the state the grain from the leased farm is in as well.

B. *Custom Cattle Feedlot Lien and Commodity Production Contract Lien*

The biggest difference to the Custom Cattle Feedlot Lien and the Commodity Production Contract Lien with the adoption to Revised Article 9 is that a financing statement must be filed with the Secretary of State’s Office rather than a lien statement.¹⁴⁷ Unlike the landlord’s lien, a statement that the Custom Cattle Feedlot Lien or the Commodity Production Contract Lien is being filed for the

140. *See id.*

141. *See Baker, supra* note 85, at 1452.

142. IOWA CODE § 570.1 (2003).

143. *See id.* § 570.1-.10.

144. *Perkins v. Farmers Trust & Sav. Bank*, 421 N.W.2d 533, 535 (Iowa 1988).

145. IOWA CODE § 554.9302 (2003).

146. *Id.* § 554.9301.

147. *See id.* §§ 579A.2, 579B.4.

purpose of perfection is not required.¹⁴⁸ Also unlike the landlord's lien, neither of these two liens allows for the potential lien holder to file and perfect the lien before the lien becomes effective.¹⁴⁹

Significant changes have been made to both liens in the legislation surrounding the adoption of Revised Article 9.¹⁵⁰ House File 549 was the amendment that required the financing statement to be filed rather than the lien statement.¹⁵¹ Also, House File 549 set forth that both liens, if filed and perfected correctly, are superior to all other liens on the cattle or commodity under the production contract, except for a veterinarian's lien under Iowa Code section 581.¹⁵² House File 549 is now codified in Iowa Code sections 579A and 579B.¹⁵³

Other than the types of commodities the two liens cover, the biggest difference between them is the time period allowed for filing and perfecting the lien.¹⁵⁴ Under the Custom Cattle Feedlot lien, a feedlot operator has twenty days after the arrival of the cattle to file the financing statement and become perfected.¹⁵⁵ The Commodity Production Contract Lien allows for forty-five days after the arrival of the livestock, unless the livestock arrive on a monthly basis or more frequently.¹⁵⁶ If there is "continuous arrival" of the livestock, the contract producer has 180 days after the arrival of the livestock to perfect the lien.¹⁵⁷ In the event a cattle feeder misses the twenty day time period, he or she can still file under the Commodity Production Contract lien and receive virtually the same level of protection.¹⁵⁸ However, the feedlot operator may not file both types of liens.¹⁵⁹

148. *Id.* § 570.1; *see also id.* §§ 579A.2, 579B.4.

149. *Id.* §§ 570.1, 579A.2, 579B.4.

150. *See* H.F. 549, 79th Gen. Assem., 2d Sess. (Iowa 2001).

151. *See id.*

152. *See id.*

153. *See* IOWA CODE §§ 579A.1-.5, 579B.1-.7 (2003); *see also* H.F. 549, 79th Gen. Assem., 2d Sess. (Iowa 2001).

154. *See* IOWA CODE §§ 579A.1-.5, 579B.1-.7 (2003).

155. *Id.* § 579A.1-.5.

156. *Id.* §§ 579B.1-.7; H.F. 549.

157. *See* H.F. 549.

158. McAfee, *supra* note 34, at 8.

159. *Id.*

V. CONCLUSION

At the time of this writing, members of both the Iowa Senate and House were attempting to draft amendments to the agricultural liens, especially the Landlord's Lien.¹⁶⁰ With the effects the changes to the liens have made, one can anticipate even more changes in the months and years to come in order to deal with various legal issues that may arise out of the changes to agricultural liens with the adoption of Revised Article 9.

As usual, when changes come to a part of law or society that has been in existence in some form for over seventy years, there will be some who resist the change and some who embrace the change. Clearly, one can feel for the bankers and other lenders who were in the dark on some of the liens attached to farm customers' collateral to which the bank was also attached. For this reason, perhaps the filing requirements are beneficial to both sides because if lenders have better information regarding their level of security, they will be more likely to lend to the new or somewhat marginal farm customer.

However, one can also feel for the lien holders who were used to the old way of automatically having a lien established, only to have it changed with little or no notice. Hopefully, as time passes, more and more people will become aware of the perfection requirements. Until then, attorneys play an important role by keeping clients who could be adversely affected by the changes in the laws regarding agricultural liens informed.

160. See S.F. 2081, 79th Gen. Assem., 2d Sess. (Iowa 2001); see also S.F. 2096, 79th Gen. Assem., 2d Sess. (Iowa 2001).