

Landlord's lien

In Iowa, a statutory (created by state law) landlord's lien exists. The lien is applicable whether the lease is for cash rent or crop share. The statutory lien is a lien "upon all crops grown upon the leased premises, and upon all other personal property of the tenant which has been used or kept thereon during the term and which is not exempt from execution."

Over the years, landlord's liens have been a powerful device for landlords. A landlord's lien takes priority over the rights of a purchaser of property subject to the lien and it takes priority over security interests held by lenders. The landlord's lien generally prevailed against purchasers of commodities even though the landlord's lien was not recorded. Ironically, in the event a tenant files bankruptcy, the landlord's lien goes to the bottom of the list of priorities.

Under current law, a landlord's lien is subject to treatment as an "agricultural lien." That means a landlord's lien, to have priority, must be filed using a financing statement. That's the same document used by a lender to handle a new secured loan. To be effective, the financing statement must be filed when the tenant takes possession of the leased premises or within 20 days after the tenant takes possession. In addition, the financing statement must include a statement that it is filed for the purpose of perfecting a landlord's lien.

If the tenant files bankruptcy, the landlord must make a separate filing to become a secured creditor with priority in the bankruptcy estate.

It is possible to create a contractual landlord's lien in the lease document as a supplement to the statutory landlord's lien. The benefit of a contractual lien is that it may reach property that would be exempt under the statutory landlord's lien.

Additional protection

For landlords concerned about default on the payment of rent by a tenant, the following suggestions may provide protection in addition to the landlord's lien.

- Some landlords require that all the rent be paid at the beginning of the lease period. If all the rent is to be paid up front, the rental rate is normally reduced to account for the additional interest accrued due to early payment.
- Use an irrevocable letter of credit, issued by the lender on behalf of the tenant, for insuring payment of rent.
- Have the landlord's name included as a payee on the check for grain. This will give the landlord leverage in the payment of rent because the landlord must sign the check before it can be negotiated.

Leases and farm program benefits

Leases can also have an impact on a producer's eligibility for farm program payments. In general, to qualify for farm program payments, an individual must be "actively engaged in farming." Each "person" who is actively engaged in farming is eligible for one payment limit of federal farm program payments. A tenant qualifies as actively engaged in farming through the contribution of capital, equipment, active personal labor or active personal management. Likewise, a landlord qualifies as actively engaged in farming by the contribution of the owned land if the rent or income for the operation's use of the land is based on the land's production or the operation's results (not cash rent based on a guaranteed share of the crop). In addition, the landlord's contribution must be "significant," must be "at risk," and must be commensurate with the landlord's share of the profits and losses from the farming operation.

A landlord who cash leases land is considered a landlord under the payment limitation rules and may not be considered actively engaged in farming. In this situation, only the tenant is considered eligible. Under the payment limitation rules, there are technical requirements that restrict the cash-rent tenant's eligibility to receive payments to situations in which the tenant makes a "significant contribution" of (1) active personal labor and capital, land or equipment; or (2) active personal management and equipment.

Other considerations

The Iowa constitution has set a limit of 20 years on the length of a lease agreement. Also, Iowa requires the recording of leases that have a term of 5 years or longer.

Lease forms can be obtained from your county extension office. Preprinted lease forms are useful in negotiating. They can serve as a list of items to be discussed that might otherwise be overlooked. Delete items that do not apply and add items that are part of the agreement. Forms are available in the leasing section of the Ag Decision Maker web site, or contact your local county extension office.
