REVISED
ARTICLE 9
AND
IOWA CHAPTER 570
LANDLORD LIENS

By:

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Prepared for the

IOWA STATE UNIVERSITY
FARM LEASE
MEETING

2001
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The materials herein are intended for general information. They should not be relied upon as legal precedent. Should a question arise in the area of landlord liens and Article 9, you should contact an attorney.

All citations have been omitted from within the body of this document. Several sources have been utilized by the author in preparation of these materials. The author acknowledges that due credit should be given these sources. These sources include, but are not limited to the following:

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Drew L. Kershen
Alvin C Harrell
Iowa Code
Revised Article 9
Senate Amendment 5339
House File 2513
1. **Introduction**

   From a very basic point of view, Article 9 is those laws which govern purchasing of goods and services between debtors and creditors. These laws govern which creditor will get paid first and why. The laws of Article 9 are commonly referred to as “Secured Transactions.”

   Article 9 final revision was approved in 1998 by the National Conference of Commissioners on Uniform State Laws. This revision was subsequently adopted by the 78th General Assembly in 1999. One of the revisions made to Article 9 was its treatment of agricultural liens. Before Article 9 was revised, agricultural liens were exempted from the rules of secured transactions. There existed two major bases for this exemption: 1) they are created statutorily through a state’s legislature and 2) agricultural liens do not require that the lien holder have physical possession of the collateral. Since the revision of Article 9, agricultural liens are now subject to the laws of secured transactions.

   Agricultural liens, by their very nature are extremely similar to secured interests (i.e., interests created pursuant to a security agreement such as a credit application for an operating loan). Together agricultural liens and security agreements create two similar systems of extending credit to the same debtor. The result of extending credit to the same debtor based on two different collateral security systems (i.e., one based on secured transactions and the other
based on agricultural liens) gives rise an unavoidable conflict in terms of hidden claims.

For example, assume farmer secures an operating loan from his/her lender. Under the laws of secured transactions in order to assure repayment of this loan before any other creditor, the Lender must file notice with the Secretary of State before any other lenders, who intend to use the same collateral. This notice indicates that farmer signed a credit agreement with Lender and that Lender is entitled to all of the proceeds from farmer’s crops (i.e., collateral) until the loan is satisfied. Let us further assume that satisfaction of the loan will cost approximately $150.00 per acre.

Assume that farmer leases or rents part of his farm from a landlord (Landlord). The farmer signs a lease with Landlord stating that he will pay Landlord $150.00 per acre. Further, the lease states that the total rent is due and payable upon the harvest of the crop.

Assume now that the crop has been harvested and both the operating loan and the rent become due and payable. The farmer sells the crop, but only receives 290.00 per acre (excluding for the moment LDP, crop insurance, or like payments). The farmer receives the check for the crop. It is written to the farmer and the Lender.

Prior to July 1, 2001 who was entitled to first payment, the Lender or the Landlord? The answer is the Landlord. Under Iowa Code Chapter 570 and other applicable law, landlords are given first priority in being paid. Furthermore, under Chapter 570 (but prior to its amendment
that will be discussed later) the Landlord is not required to notify the Lender of his lien on the
proceeds of the crop. Thus, as this oversimplified example teaches, the Lender is left in a
position of not being able to know what liens may arise prior to lending money to the farmer.
The Lender is unable to always accurately predict market trends in order to protect its collateral.

The Lender is even less able to predict market trends or protect his/her investment in
the farmer-tenant. Landlord liens (which are agricultural liens, see below) provide security to the
landlord. Such security is owed to the landlord for the use of his/her land.

In an effort to bring more clarity and certainty to perfection, priority, and enforcement of
agricultural liens, experts note that there is an obvious need to bring such liens within the scope
of Article 9. The goal is to reduce the role of secret liens that create unnecessary uncertainty and
litigation between secured creditors and lien-holders. Moreover, bringing in agricultural liens is
designed to encourage merchants, manufacturers, and suppliers (but not necessarily landlords)
who have entered the realm of agricultural lending to conduct themselves more as secured
creditors, rather than merely lien holders. Nevertheless, while agricultural liens are now subject
to Article 9, they are still not security interests. The importance of this will be illustrated later.

2. **Agricultural Liens Under Revised Article 9**

   a. **Definition**

   Iowa Code Section 554.9102(1)(e) defines agricultural liens as follows:

   “Agricultural lien” means 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.

Under Revised Article 9, agricultural liens contain three necessary elements: First, agricultural liens are interests, other than a security interest, in “farm products.” Farm products include crops and livestock among others. The value of farm products will secure the payment of an obligation for goods or services rendered to the farmer and that aided the farmer in “raising, cultivating, propagating, fattening, grazing,” or any other related farm operation activity. An agricultural lien may also secure the debt owed to a landlord pursuant to a lease that is connected to the farming operation.

Second, an agricultural lien arises from statute. In contrast, security interests arise from the signing of a security agreement. The statute creating the lien creates an interest in favor of the person (or entity) who provided goods or services to the farming operation. Such goods and services, however, must be provided to the farming operation pursuant to legitimate operation needs and not out of the ordinary farm purchases. For example, a swimming pool for the corn
field would not be in the “ordinary course of business.”

Finally, the agricultural lien is nonpossessory. Meaning that the lien holder does not need to have the collateral in his/her possession in order to claim an interest therein.

b. Perfection

For purposes of this discussion, perfection may be defined as when a creditor puts the public on notice that the creditor has an interest in the farm product from which it expects to be paid. The creditor puts the public on notice by filing a “filing statement” with the Secretary of State.

Although agricultural liens are created by statutes and are based upon the status of a particular person, their introduction into Article 9 introduces the necessity of perfection by lien holders. The revised code indicates “an agricultural lien is perfected if it has become effective and all of the applicable requirements for perfection in Section 9-310 have been satisfied.” The revision further indicates that an agricultural lien is “perfected continuously if it is originally perfected by one method under this article and is later perfected by another method under this article, without an intermediate period when it is unperfected.”

Perfecting an agricultural lien under the revision then requires completion of two steps. First, the agricultural lien must become effective, meaning that whatever requirements that the governing statute requires for creation of the lien must be satisfied (i.e., lease acreage to a tenant
for crop production). Second, the perfection requirements set out in Revised Section 9-310 must be satisfied. A discussion of Article 9 perfections follows below.

Section 9-310 governs when filing is required to perfect agricultural liens and security interests or when filing provisions do not apply. The general rule under this section indicates that filing is required for all agricultural liens. Therefore, in order to perfect an agricultural lien, the lien holder must file notice of lien with the Secretary of State in the form of a filing statement.

c. Priorities and Jurisdiction

Once the agricultural lien is perfected, a question arises as to how will the perfected agricultural lien compete against other agricultural liens and security interests in terms of priority of receiving payment. Beginning with priority and differing jurisdictions, Section 9-302 of the revision provides the law governing perfection and priority of agricultural liens. It states “while farm products are located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of an agricultural lien on farm products.”

It is interesting to note that the “choice of law” (i.e., which states law will control as between Nebraska and Iowa for example) rules for security interests are markedly different than those applicable to agricultural liens. Section 9-301 outlines the law governing perfection of and priority of security interests. It states:
(1) Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral.

(2) While collateral is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a possessory security interest in that collateral.

(3) Except as otherwise provided . . . the local law of that jurisdiction governs: . . . (C) the effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral.

The general rule of Section 9-301(1) for security interests is that perfection and priority are governed by the law of the jurisdiction where the debtor is located. Conversely, the general rule for agricultural liens, Section 9-302 provides that perfection and priority are governed by the jurisdiction where the farm products are located. Therefore, while there is a possibility of different filing locations for security interests in farm products, as compared to agricultural liens, agricultural lenders must be alert to the need to search in at least two central locations under Revised Article 9 - the state of the debtor’s residence to learn about perfected security interests and the state of the location of the farm products to learn about perfected agricultural liens.

In terms of continued perfection of agricultural liens following change in governing law (i.e., moving the farm product from one state to another), Section 9-316 comment seven (7) specifically indicates that no such continuance exists. Consider the following example:

Supplier holds an agricultural lien on corn. The lien arises under an Iowa statute. Supplier perfects by filing a financing statement in Iowa, where the corn is located. Debtor stores the corn in Missouri. Assume the Iowa agricultural lien survives or an agricultural lien arises under Missouri law. Once the corn is located in Missouri, Missouri becomes the jurisdiction whose law governs perfection. Thus, an agricultural lien will not perfect unless Supplier files a financing statement in Missouri.
As a result, an agricultural lien may be subject to immediate loss of perfection upon movement of the collateral to another jurisdiction, unlike a security interest. Loss of perfection means loss of priority against competing security interests and agricultural liens under Revised Section 9-322. Loss of priority is detrimental to the interest of the lien holder in terms of losing the right to collect due rent before the lender collects on its operating loan. By their very nature, landlords do not hold diverse portfolios as do lending institutions, thus they find themselves at a high risk.

A security interest holder attains more protection under Article 9 since its interest need not necessarily follow the farm product, but rather the debtor. A security interest holder need only check to see if an agricultural lien or another security interest exists in the new jurisdiction. Even if an agricultural lien arises in another jurisdiction, a prudent security interest holder has already investigated this possibility and has previously filed a financing statement in that jurisdiction. Thus, the perfected security interest holder will likely have priority by virtue of having perfected first.

Collateral and agricultural liens are governed by Section 9-315. This section indicates that while agricultural liens continue in the collateral, they do not continue in the proceeds of the collateral. Thus, once the crop is sold, the lien holder continues to have an interest in the crops, but not in the proceeds (i.e., the money). Prior to the revision of Article 9, the Iowa Supreme Court had extended the reach of landlord liens to crop proceeds. Nevertheless, in adopting the
revisions, Iowa’s legislature supercedes the precedent created by the Iowa Supreme Court. Therefore, the extension of landlord liens to crop proceeds may cease to exist. The Court may attempt to reason that its former precedent should remain based on the original intent of the landlord lien statute. However, given that the legislature did not address this issue when it recently amended the landlord lien statute (see discussion below), there is no firm basis to reason that the legislature’s amendment contemplated the extension of liens to proceeds. Moreover, the revision itself, as noted above, plainly declares that agricultural liens continue in product but do not extend to proceeds.

d. Other Rules of Priority

Revised Section 9-317 governs interests that take priority or take free of unperfected security interests or agricultural liens. According to Section 9-317, for purposes of conflicting security interests and rights of lien creditors only,

“[a]n . . . agricultural lien is subordinate to the rights of: (1) a person entitled to a priority under Section 9-322; and (2) except as otherwise provided in subsection (e), a person that becomes a lien creditor before the earlier of the time the . . . agricultural lien is perfected or a financing statement covering the collateral is filed.”

The general rule of Section 9-322 actually contains three priority rules. The first rule indicates that as between conflicting perfected agricultural liens, the first perfected has priority. The second rule indicates that a perfected agricultural lien takes priority over an unperfected
agricultural lien. The third rule indicates that as between two agricultural liens that are
unperfected, the first to become effective takes priority. Notwithstanding these general priority
rules, each is subject to exceptions set out in the rest of Section 9-322.

The most important of these exceptions is subsection (g). Subsection (g) states “[a]n
perfected agricultural lien on collateral has priority over a conflicting security interest in or
agricultural lien on the same collateral if the statute creating the agricultural lien so provides.”
The official comments to Section 9-322 further clarify by saying “[u]nder subsection (g), if
another statute grants priority to an agricultural lien, the agricultural lien has priority only if the
same statute creates the agricultural lien and the agricultural lien is perfected.” It is through
Section 9-322(g) that Article 9 revisionist contemplated legislatures would preserve status of
agricultural liens.

III. Iowa’s Treatment of Agricultural Liens

1. Iowa and The Revision

Section 9-334 of the Revision sets forth the rules governing priority of security interests
found in fixtures and crops. Section 9-334(i) indicates “A perfected security interest in crops
growing on real property has priority over a conflicting interest of an encumbrancer or owner of
the real property if the debtor has an interest of record in or is in possession of the real property.”1
Section 9-334(j) goes on to state out that “subsection (i) prevails over any inconsistent provisions

1 § 9-334(i).
of the following statutes: [list here any statutes containing provisions inconsistent with subsection (i).]”

The language of these sections seems to implicate liens that may be held by landlords with respect to tenants.

If read with this implication, subsection (i) appears to say that a perfected security interest in crops growing on leased land will take priority over any “interest”, not necessarily a security interest, but including a “lien” created in the landlord, if the tenant is leasing, cash renting, or crop sharing the property. Subsection (j) allows respective state legislatures to specifically declare which statutes will be subjected to subsection (i).

Nevertheless, comment 12 to Section 9-334 offers clarification as to how subsection (j) should be applied. It states:

Growing crops are “goods” in which a security interest may be created and perfected under this Article. In some jurisdictions, a mortgage of real property may cover crops, as well. In the event that crops are encumbered by both a mortgage and an Article 9 security interest, subsection (i) provides that the security interest has priority. States whose real-property law provides otherwise should either amend that law directly or override it by enacting subsection (j).

Thus, according to the comment, subsection (i) is meant to address conflicts between security interests and credit agreements. Therefore, a landlord would have a strong position in arguing that Section 9-334 was not meant to govern conflicts between landlord liens and security interest holders. The landlord’s argument is further buttressed by Section 9-322 governing

\footnote{2 § 9-334(j).}
conflicts between security interests and agricultural liens, of which landlord liens are included.

Conversely, Iowa’s legislature has modified Section 9-334 on its face without relying on its intent or that of Section 9-322. Senate Amendment (SA) 5339 modifies Section 9-334 subsection (i) by adding the words “Except as provided in subsection [(j)]” to the beginning of the subsection. Subsection (j) is then written to state “The provisions of this Article regarding agricultural liens prevail over any inconsistent provisions of subsection [(i)].”

Iowa subjects subsection (i) to subsection (j), thereby changing the intent of subsection (i) and (j) as drafted in the Revision. By changing its intent, Iowa seems to push landlord liens (as well as other agricultural liens) into the scope of Section 9-334. The effect may act to give agricultural liens superior standing to security interests in terms of mortgage agreements and crops.

Interestingly, Iowa does not make any changes to Section 9-322(g). By so doing, Iowa continues the intent of drafters in that it requires the lien creating statute create the superpriority characteristics for the lien, if superpriority is to exist at all.

2. Iowa And Agricultural Liens

As previously discussed, under Revised Article 9 agricultural liens will now be governed

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3 Senate Amendment 5339. Iowa’s Revised Section 9-334(i) states: “Except as provided in subsection [(j)], a perfected security interest in crops growing on real property has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property.
by the same rules as security interests. Of these rules, perhaps the most important is the method of perfection. With that, let us begin our examination of Iowa’s lien statutes. For purposes of this discussion, we will be limited to a discussion Iowa Code Chapter 570 – Landlord’s Lien.

a. Chapter 570: Landlord’s Lien

The purpose of Chapter 570 is to protect the interests of landlords who lease or cash rent their property to farmers. Chapter 570 provides landlords “a lien for the rent upon all crops grown upon the leased premises, and upon any other personal property of the tenant which has been used or kept thereon during the term and which is not exempted from execution.” Generally speaking landlord liens under Chapter 570 are good for one year after rent has fallen due.

Section 570.5 provides for creation and attachment of the lien. However, the current draft of Chapter 570 does not provide for Article 9 perfection of the lien. Senate Amendment 5339 amends Section 570.2 by inserting Article 9 perfection. The amendment states:

2. In order to perfect a lien in farm products as defined in section 554.9102, which is created under this section, a landlord must file a financing statement as required by section 554.9308, subsection 2. Except as provided in chapters 571, 572, 579A, 579B, and 581, as perfected lien in the farm products has priority over a conflicting security interest or lien, including a security interest or lien that was perfected prior to the creation of the lien under this section, if the lien created in this section is perfected on either of the following dates:
   b. When the debtor takes possession of the leased premises or within twenty days after the debtor takes possession of the leased premises.
A financing statement filed to perfect a lien in the farm products must include a statement that it is filed for the purpose of perfecting a landlord’s lien. Within twenty days after a landlord who has filed a financing statement receives a written demand, authenticated as provided in Article 9 of chapter 554, from a tenant, the landlord shall file a termination statement, if the lien in the farm products has expired or if the tenant is no longer in possession of the leased premises and has performed all obligations under the lease.

In order for the landlord lien to take priority, it must become effective and be properly perfected. If the lien was created prior to July 1, 2001, then it must have been perfected pursuant to Revised Article 9 rules (i.e., the filing of a financing statement with the Secretary of State). If the landlord has not filed a filing statement as of July 1, 2001, he/she will be subordinated (in terms of priority of receiving any payments) to creditors holding perfected security interests or agricultural liens. This means that if the landlord did not file a financing statement prior to July 1, 2001, they no longer have a valid claim to receive their rental payments before anyone who has perfected. Thus, the bank, with a perfected security agreement, is entitled to be paid in full for the current year’s operating loan, and any outstanding balance due from previous operating loans before the unperfected landlord receives his/her first dime of rent.

When landlord liens are created subsequent to July 1, 2001 perfection must take place within twenty (20) days after the tenant takes possession of the land. If the landlord fails to perfect his/her lien, by filing a financing statement with the Secretary of State, he/she will lose his/her rights of priority over existing perfected security interests or other perfected agricultural liens.
For purposes of terminating the landlord lien, the amended statute requires that the tenant provide the landlord with a written demand that has been authenticated pursuant to Article 9 rules. Basically, Article 9 requires the demand to be signed by the tenant in order to be authenticated. However, it also allows the tenant, for example to e-mail, the termination notice to the landlord. So long as the e-mail is executed or encrypted or processed with the “present intent of the authenticating person to identify the person.” In other words, the e-mail message must be identifiable back to the sender and the sender must be the landlord’s tenant.

Once an authenticated written demand of termination is received by the landlord, the landlord must file a termination notice with the Secretary of State within twenty (20) days. Nevertheless, the landlord need not terminate if the lien has not expired (i.e, landlord liens last for one year under Chapter 570) or if the tenant is still in possession of the property and has not performed all of his/her obligations as set forth in the lease.

Chapter 570 does provide the lien holder with priority over existing security interests, but not necessarily over other agricultural liens. Nevertheless, when the legislator amended Chapter 570 they seemed to have intended that landlord liens would have priority over all other agricultural liens. However, this intent may yet be tested in court in conjunction with other agricultural liens.