

The Illinois Landlord's Lien: Securing Agricultural Rent Payments after August 21, 2002

By D. L. Uchtmann

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Public Act 92-819 has changed the rules about how an agricultural landlord assures that cash or crop-share rent will be paid. How to assure payment is a billion dollar question in Illinois where more than 60% of the state's twenty seven million acres of farmland is rented. One important consideration is to rent to a tenant who is trustworthy and financially stable, has a good reputation as a farmer, and perhaps has a long term association with the landowner. Also, where the rent is paid as cash, landlord can require that some portion of the cash rent be paid before planting and harvesting. But the statutory landlord's lien upon crops, as amended by Public Act 92-819 effective August 21, 2002, is also very important. This article discusses the Illinois Landlord's Lien, but the reader may want to discuss other strategies with the reader's attorney.

Landlord's Lien Upon Crops: the Statute

The text of the Landlord's Lien Statute, 735 Illinois Compiled Statutes 5/9-316, Lien upon crops, as amended by P.A. 92-819, effective August 21, 2002 is quoted below. The four paragraphs highlight four important concepts.

"Every landlord shall have a lien upon the crops grown or growing upon the demised premises for the rent thereof, whether the same is payable wholly or in part in money or specific articles of property or products of the premises, or labor, and also for the faithful performance of the terms of the lease. Such lien shall continue for the period of 6 months after the expiration of the term for which the premises are demised, and may be enforced by distraint as provided in Part 3 of Article IX of this Act.

"A good faith purchaser shall, however, take such crops free of any landlord's lien unless, within 6 months prior to the purchase, the landlord provides written notice of his lien to the purchaser by registered or certified mail. Such notice shall contain the names and addresses of the landlord and tenant, and clearly identify the leased property.

"A landlord may require that, prior to his tenant's selling any crops grown on the demised premises, the tenant disclose the name of the person to whom the tenant intends to sell those crops. Where such a requirement has been imposed, the tenant shall not sell the crops to any person other than a person who has been disclosed to the landlord as a potential buyer of the crops.

"A lien arising under this Section shall have priority over any other agricultural lien as defined in, and over any security interest arising under, provisions of Article 9 of the Uniform Commercial Code." (Note: this 4th paragraph was amended by P.A. 92-819, effective August 21, 2002; the quoted language is the paragraph as amended.)

P.A. 92-819, is available on the Internet (visited September 4, 2002) at <http://www.legis.state.il.us/publicacts/pubact92/acts/92-0819.html> (look at Section 5 of the Act to see the changes in the Landlord's Lien Statute).

Question: Didn't the statute previously require a landlord to file Form UCC1 with the Secretary of State to perfect the lien under Article 9 of the Uniform Commercial Code?

Answer: Yes. From July 1, 2001 to August 21, 2001 a landlord had to file Form UCC1 with the Secretary of State in order for the Landlord's Lien to have priority over the claims of banks and others with a lien upon the crop.

Reason: P.A. 91-893, effective July 1, 2001 amended Article 9 of the Illinois Uniform Commercial Code and the Landlord's Lien Statute; in effect, the amendment required landlords to file Form UCC1 to make the landlord's Lien a priority lien. This filing requirement was unpopular with landlords and farm managers, and triggered efforts to have the filing requirement repealed. Public Act 92-819, effective August 21, 2002, eliminated the requirement to file a UCC1 with the Secretary of State in order for the Landlord's Lien to have priority. In effect, on August 21, 2002, Illinois rolled back the Landlord's Lien Statute to the version that existed before July 1, 2001.

Question: What does this mean for the 2002 crop and subsequent crops harvested from rented land? Does a landlord have to file Form UCC1 to perfect the Landlord's lien on these crops?

Answer: No. It is not necessary for a landlord to file Form UCC1 with the Secretary of State in order for the Landlord's Lien to be a priority lien upon the 2002 crop or subsequent crops.

Question: What if I filed Form UCC1 for the 2001 crop? Do I need to do anything to "undo" the filing since the law has changed?

Answer: No. It appears no action is needed to rescind a UCC1 filed with the Secretary of State after July 1, 2001 to perfect the Landlord's Lien; clearly, P.A. 92-819 does not expressly require such action.

Crop Has Not Been Sold : Collecting Rent Under the Landlord's Lien Statute (Under the Statute, the Landlord's Lien has Priority Automatically)

The following example illustrates how the priority afforded a Landlord's Lien helps to assure that Landlord will be able to collect rent. Example 1 involves unsold grain. (Where grain has been sold, the situation is more complex as illustrated in Example 2)

EXAMPLE 1: RENT UNPAID – 2002 CROP REMAINS UNSOLD (CASH OR CROP-SHARE LEASE)

This example involves the following parties: (a) **Landowner**, who rents 160 acres of Illinois farmland to Tenant, (b) **Tenant**, who operates Landowner's farm and borrows money for operating loans and other debts, (c) **Elevator**, which buys crops from farmers, (d) **Bank**, which makes operating loans to Tenant and, to secure the loan, has a

perfected security interest in crops grown by Tenant, and (e) **Ag Lien Holder**, Tenant's neighbor who custom-combines the crop for Tenant.

Hiring a neighbor, Tenant harvests 150 bu./A. corn from the 160 rented acres. Tenant stores the 24,000 bushels, worth \$48,000, in tenant's own bins. Bank has a perfected security interest in crops grown by tenant as security for tenant's \$50,000 operating loan. Tenant is insolvent and can't pay off Bank's operating loan, Landowner's rent, the custom combining costs, and other debts, but the Tenant has not filed bankruptcy.

Question: Is Landlord assured of collecting the unpaid rent?

Answer: Yes (assuming Tenant has not filed bankruptcy), because the Landlords Lien is a priority lien that no longer requires a UCC1 filing for priority, even over perfected Article 9 security interests. See 735 Ill. Comp. Stat. 5/9-316 as amended by P.A. 92-0819. (Note: between July 1, 2001 and August 21, 2002 a UCC1 filing would have been required for Landlord to have priority over Bank)

Question: What if Tenant has filed bankruptcy?

Answer: The effectiveness of the Landlord's Lien where Tenant has filed bankruptcy is more limited because a Bankruptcy Trustee may be able to avoid the statutory Landlord's Lien under Section 545 of the Bankruptcy Code. If a landlord anticipates the possibility that a tenant will file bankruptcy, the landowner should discuss appropriate legal strategies with an attorney.

Crop Has Been Sold: Collecting Rent Under the Landlord's Lien Statute (Notice Must Have Been Mailed to Prospective Purchasers of the Crop)

Under the Landlord's Lien Statute, a good faith purchaser of the tenant's crop grown on landlord's farmland (e.g., the local elevator), takes free of the statutory landlord's lien unless the landlord provides notice as required by statute. This notice rule has been in the Landlord's Lien statute since 1983 and was not changed by subsequent amendments. Example 2 illustrates how sending the notices to prospective purchasers can, in some circumstances, help to assure that the rent will be paid.

EXAMPLE 2: RENT UNPAID – TENANT HAS SOLD THE 2002 CROP (CASH OR CROP-SHARE LEASE)

This example involves the following parties: (a) **Landowner**, who rents 160 acres of Illinois farmland to Tenant, (b) **Tenant**, who operates Landowner's farm and borrows money for operating loans and other debts, (c) **Elevator**, which buys crops from farmers, (d) **Bank**, which makes operating loans to Tenant and, to secure these loans, has a perfected security interest in crops grown by tenant, and (e) **Ag Lien Holder**, Tenant's neighbor, who custom-combines the crop for Tenant.

Hiring a neighbor, Tenant harvests 150 bu./acre corn from the rented 160 acres and delivers all 24,000 bushels to Elevator for sale. Elevator pays Tenant \$48,000 for the sold crop (if the lease were a crop-share lease, further assume Tenant did not divide Landowner's and Tenant's share and did not instruct Elevator to issue a separate check

to Landowner). Tenant is insolvent and can't pay off Bank's operating loan, Landowner's rent, the custom combining costs, and other debts.

Question: Can the Landlord collect the unpaid rent from Elevator?

First Possible Answer: Yes, if Landowner sent Elevator the notice required by statute. Landowner can probably collect the unpaid rent from the Elevator since a purchaser with notice takes the crop subject to the Landlord's Lien. Landowner should seek legal counsel regarding the steps to be taken to enforce the lien against the elevator.

Second Possible Answer: No, if Landowner did not send the required notice to Elevator. If Elevator purchased in good faith, Landowner's only recourse may be against the insolvent Tenant. Since the crop is gone, Landowner's claim for rent is now unsecured and probably will not be paid in full since Tenant is insolvent.

Suppose Landlord wants to be able to enforce the Landlord's Lien against the purchaser of the crop, e.g., an elevator? The following form can be used to give the required notice of the Landlord's Lien to prospective purchasers.

NOTICE OF LANDLORD'S LIEN

Prospective Purchaser's Name:

Prospective Purchaser's Address:

Notice is hereby provided of the landlord's lien upon crops created by 735 Ill. Comp. Stat. 5/9-316. The name and address of the landlord, tenant, and a description of the leased premises are provided below:

Landlord's Name:

Landlord's Address:

Tenant's Name:

Tenant's Address:

Description of Leased Premises:

In preparing and sending these notices, the following should be kept in mind:

1. Some landlords will want to send the notices as a way of providing greater assurance that the rent will be paid; other landlords will choose not to send the notices. Since 1983, the more common practice in Illinois has been for Landowners not to send the notices; whether this has been a deliberate decision in which Landowners prefer to rely on the

reputation of the tenant or other strategies to assure the rent will be paid, or merely ignorance of the law, is not really known.

2. If the notices are being sent, they must be sent by registered or certified mail to each prospective purchaser of the crops; also, the notices must be sent each year since they only provide protection to the landlord for the six month period following the date the notice is sent; if the notices are going to be sent, shortly before harvest would be a good time to send them.

3. To assure that the list of prospective purchasers of the crop is current, it is generally wise to include a provision in the lease that requires the tenant to disclose to the landlord the names of any persons to whom the tenant intends to sell the crops, or to otherwise impose this requirement; under 735 Ill. Comp. Stat. 5/9-316.1, tenant commits a Class A misdemeanor for knowingly violating the tenant's duty to disclose those who will purchase the crop.