

HOW TO OBTAIN A FIRST LIEN ON CROPS

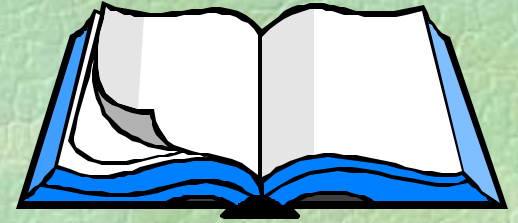
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Article 9 of the Uniform Commercial Code (UCC)

- State Law governing financing and taking a lien on personal property
- Major changes effective July 1, 2001
- Biggest change for Bankers and Lawyers:
 - Where to File Financing Statements

Purchase Money Priority for Production-Money Security Interests

- A creditor that provides money or goods on credit to produce crops can get a first priority lien on the crops, ahead of a bank or other lender with a blanket security interest.
- Fertilizer, chemical, lime providers would certainly qualify if they follow the rules.

Basic Requirements for Priority

- File a Financing Statement
- Send a Notice to other lienholders



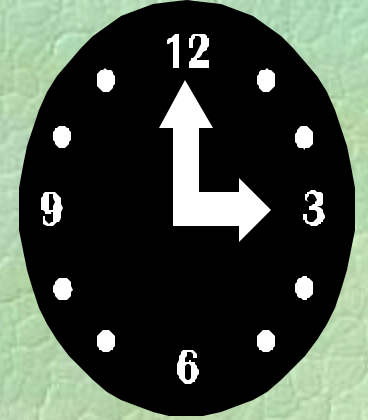
How to file the Financing Statement

- The Debtor does not need to Sign!
- The Debtor must sign something that grants you a lien on the crops and allows you to file the financing statement. This could be part of your bill of sale, credit agreement or other agreement.
- Don't forget the filing fee (currently \$20 for paper and \$10 for electronic filing)

Info for the Financing Statement

- Need Debtor's full and correct legal name
- Need to know whether Debtor is a corporation, partnership, LLC or individual
- Don't use a trade name or sole proprietorship name
- You can search for Wisconsin Corporate Names at <http://www.wdfi.org/corporations/>
- Describe the collateral: All crops, or all potatoes grown in 2002 or 2003

When to File your Financing Statement



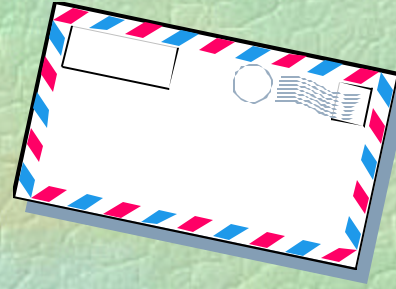
*The statement must be filed at the time
that you first give new value to the
Debtor to enable the Debtor to produce
the crops.*

*If Debtor orders product in advance,
obtain Debtor's authorization and make
your filing at that time.*

Where to File Financing Statement

- File in the Central Office where the Debtor is **located** (Wisconsin = DFI, not Register of Deeds)
- Corporations and LLC's are located where they were incorporated. Delaware corporations are located in Delaware. Wisconsin LLC's are located in Wisconsin.
- Individuals are located where their residence is.
- Partnerships: Chief executive office

How to Give the Required Notice



- Use Certified Mail
- Send to each holder of a conflicting security interest in the crops
- Find these by searching the central office where the Debtor is located.
- Wisconsin corporation, LLC, or individual, search at DFI: <http://www.wdfi.org/ucc/search/>

Text of Notice:

To: (Name and Mailing address of Bank or other creditor):

On (date of transaction) I intend to acquire a purchase money security interest in (describe crops) to be grown by (debtor's name and address).

The maximum amount of new value that I am providing to (debtor) is \$_____.

My name and mailing address is:

When to Give Notice



- At least 20, but not more than 30 days before you first provide the new value to the debtor to produce the crops.
- E.g.: Debtor opens an account February 1, with deliveries scheduled beginning in March. Notice should be between 20 and 30 days prior to first delivery.

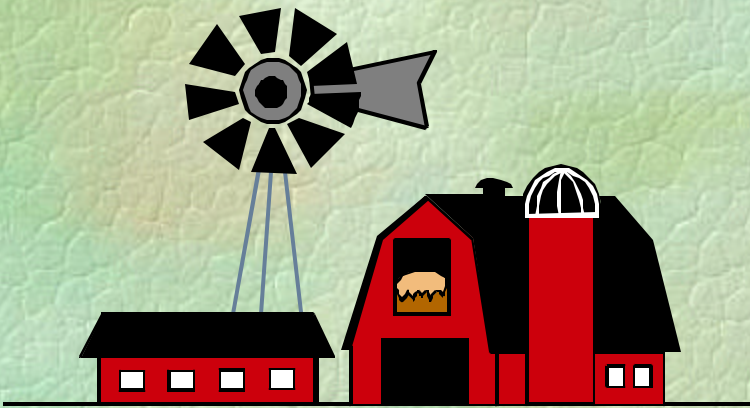
If you don't send the Notice



- If there are conflicting liens, those liens would be ahead of yours on the crop
- If there are no conflicting liens, your lien will be first on the crop and its identifiable proceeds (proceeds = payment received for the crops)

If you don't file the financing statement:

- If you have language signed by the Debtor granting you a lien on the crop, this will be good against the Debtor, but won't give you any priority as to other creditors or in a bankruptcy.



What happens if the farmer files bankruptcy?



- If you properly filed and gave the purchase money notice, your lien will be first on the crop, and will be paid first when the crop is sold.
- If you are not the first lienholder (e.g., another production creditor filed ahead of you) you are paid from the crop proceeds in order of the filing.

Questions? Problems?

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