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## **An Agricultural Law Research Article**

# **Statutory Agricultural Liens Under Revised Article 9 of the Uniform Commercial Code**

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## Statutory Agricultural Liens Under Revised Article 9 of the Uniform Commercial Code

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Within the last few years, all fifty states have adopted most of the revisions to Article 9 of the Uniform Commercial Code proposed by the American Law Institute and the National Conference of Commissioners of Uniform State Laws. These revisions, referred to simply as “Revised Article 9,” represent the most significant changes proposed to overall secured transaction laws since 1972.

It has been said that Revised Article 9 was designed to bring greater certainty to financing transactions, thus reducing the overall cost of credit.<sup>1</sup> This broad goal is to be accomplished by expanding the scope of Article 9 and clarifying the rules governing security interests. One specific example of this expansion is the inclusion of agricultural statutory liens, including agricultural landlord’s liens, within Revised Article 9.

Agricultural liens, particularly those of a “secret” nature,<sup>2</sup> have long been a thorn in the side of traditional lenders with consensual security interests.<sup>3</sup> Nevertheless, they represent at least an historical concern on the part of state legislators that a particular group of otherwise unsecured creditors are deserving of special protection. Many of these liens can be characterized as providing protection of the sort provided to “purchase money” lenders in that the lien is given to someone who has provided an essential component to the creation of a farm product. According to this rationale, but for this essential component, no farm product could have been produced therefore, the person making the contribution should be compensated prior to a lender with a blanket security interest.

The inclusion of agricultural liens within the scope of Revised Article 9 broadens its coverage in a way that will be particularly significant in agricultural states. Whether this actually results in a clarification of the rules governing security interests and agricultural liens remains to be seen. At least in the short run, it may provide an unexpected disappointment to holders of statutory agricultural liens. This article outlines this important change to secured transaction law and discusses its impact on agricultural liens.

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1. See, Steven O. Weise, *An Overview of Revised UCC Article 9*, in THE NEW ARTICLE 9 UNIFORM COMMERCIAL CODE 1 (Corinne Cooper, ed., 2nd ed. 2000); Jo M. Pasqualucci, *Revised Article 9 in South Dakota With Emphasis on Newly Included Agricultural Liens*, 46 S.D. L. Rev. 449 (2000-2001).

2. Statutory liens are considered to be secret liens when they arise automatically by statute without the need for any public filing of the interest. See, Donald W. Baker, *Some Thoughts on Agricultural Liens Under the New U.C.C. Article 9*, 51 ALA. L. REV. 1417, 1423-24 (2000).

3. See, John Mark Stephens, *Boon or Boondoggle? Proposed Article 9 Revisions Incorporate Agricultural Liens For Better, Not Worse*, 30 TEX. TECH. L. REV. 1199, 1205-06 (1999).

## I. Prior Article 9 and Agricultural Liens

The former uniform provisions of Article 9 provided rules for consensual security interests. A security interest would attach if 1) the debtor signed a security agreement that described the collateral; 2) value was given; and 3) the debtor had rights in the collateral.<sup>4</sup> Non-possessory statutory liens, including landlords liens, were excluded from the Article's coverage.<sup>5</sup> These liens came into existence, and their holders were entitled to priorities dependent upon the state law that created the lien.<sup>6</sup>

Crop financing prior to the adoption of Revised Article 9 exemplified this framework. A lender could obtain a security interest that would attach to a farmer's crop so long as the attachment requirements were met. The description of the crop required for attachment had to include a description of the real estate on which the crop was to be grown.<sup>7</sup> This interest could be perfected by filing, generally in the county office where the crop was grown.<sup>8</sup> After filing, the creditor would be protected against other creditors that filed subsequent interests.<sup>9</sup> However, in addition to this consensual security interest, the crop could become encumbered pursuant to a statutory lien.<sup>10</sup> One of the most significant of these liens is the agricultural landlord's lien,<sup>11</sup> and in many states, this lien could take priority over any security interest in the debtor's crop.<sup>12</sup>

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4. U.C.C. Former Article 9, § 9-203(1).

5. U.C.C. Former Article 9, §§ 9-102(2), 9-104(b), (c).

6. *Id.*

7. U.C.C. Former Article 9, § 9-203(1).

8. U.C.C. Former Article 9, § 9-401(1) (Second or Third Alternative).

9. U.C.C. Former Article 9, § 9-312(5). A limited exception was provided for certain crop financing, although the requirements for priority were difficult to achieve. U.C.C. Revised Article 9, § 9-312(2); *Dennis v. Connor*, 733 F.2d 523 (8<sup>th</sup> Cir. 1984). See also, Steve H. Nickles, *Setting Farmers Free: Righting the Unintended Anomaly of UCC Section 9-312(2)*, 71 MINN. L. REV. 1135 (1987) (concluding that 9-312(2) has been largely unsuccessful in protecting intervening creditors that provide crop input value).

10. For a listing of agricultural liens, see MARTHA L. NOBLE, STATUTORY AGRICULTURAL LIENS: RAPID FINDER CHARTS (National Center for Agricultural Law Research & Information, University of Arkansas School of Law, 1993) (available from the National Center for Agricultural Law, 479-575-7647).

11. The leasing of farmland is an important aspect of agriculture. It is estimated that nearly half of U.S. farmland is leased each year. *Land in Farms By Use and Ownership*, 1997 AGRICULTURAL CENSUS, available from the National Agricultural Statistics Service, USDA. As protection for land owners who lease out their farmland, many states have an agricultural landlord's lien statute that grants landlords an automatic lien on the crop grown on the rented property. See, e.g., Ark. Ann. Code § 18-41-101 (1987). Under the law prior to the enactment of Revised Article 9, this lien was generally not affected by the Article 9 provisions that governed security interests. U.C.C. Revised Article 9, § 9-104(b) ("This Article does not apply. . . (b) to a landlord's lien;"). Rather, the non-UCC statutory provisions and the judicial interpretations thereof controlled. In most instances, the lien attached as soon as the crop came into existence and had priority over a security interest granted by the tenant. See, e.g., *Burns v. Thompson*, 141 S.W.2d 530, 532 (1940); *Ferniman v. Nowlin*, 120 S.W. 2d 378, 380 (1909) (interpreting Arkansas' agricultural landlord's lien statute).

12. See, e.g., Ark. Ann. Code § 18-41-101 (1987).

## II. Revised Article 9 and Agricultural Liens

Revised Article 9 offers several advantages for lenders seeking a security interest in farm related collateral. It expands and clarifies the definition of farm products,<sup>13</sup> which are now defined as

[G]oods, 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:
  - (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;
- (D) products of crops or livestock in their unmanufactured states.<sup>14</sup>

Under this new definition, the goods need no longer be in the “*possession of a debtor engaged in raising, fattening, grazing or other farming operations,*” in order to be farm products (emphasis added).<sup>15</sup> Farm products are now goods “*with respect to which the debtor is engaged in a farming operation*” (emphasis added).<sup>16</sup> While this drafting may be less than crystal clear, it should eliminate the need for courts to consider whether actual or constructive possession is required for the goods to be considered farm products. This issue sometimes arose when a farmer stored crops at a warehouse and an inquiry was made as to whether the loss of actual possession changed the categorization of the crops. This issue was very important to any lender with a security interest in the farmer’s “farm products.”

The new definition of farm products also clarifies that crops grown on “trees, vines, and bushes” are included.<sup>17</sup> This should end any dispute regarding whether these crops are fixtures or personal property and whether they are considered to be covered by a mortgage or by a security agreement.<sup>18</sup> They are now personal property covered by Article 9. Similarly, “aquatic goods produced in aquacultural operations” are now specifically covered in the definition.

Revised Article 9 similarly expands the definition of a “farming operation,” clarifying that it covers “raising, cultivating, propagating, fattening, grazing, or other farming, livestock or aquacultural operations.”

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13. The definition of “farm products” is also expanded somewhat under Revised Article 9. U.C.C. Revised Article 9, § 9-102(a)(34).

14. *Id.* Under the prior version of Article 9, “goods” are “farm products” if they are “crops or livestock or supplies used or produced in farming operations or if they are products of crops or livestock in their unmanufactured states, and if they are in the possession of a debtor engaged in raising, fattening, grazing or other farming operation.” U.C.C. Former Article 9, § 9-109(3).

15. *Id.*

16. U.C.C. Revised Article 9, § 9-102(a)(34).

17. U.C.C. Revised Article 9, § 9-102(a)(34).

18. This is repeated in the definition of “goods” at § 9-102(44).

Another Revised Article 9 change to be applauded by secured creditors is the call for central filing of financing statements for purposes of perfection.<sup>19</sup> This has long been promoted as advantageous to creditors who need to both investigate prior interests against the debtor's property and to perfect their own interests. Central filing promotes the "ease of access to credit information" and "the more completely the files are centralized, on a state-wide basis, the easier and cheaper it becomes to procure credit information; the more the files are scattered in local filing units, the more burdensome and costly."<sup>20</sup>

The definitional changes to farm products and farming operations in Revised Article 9 generally benefit both the secured lender and the debtor in that added clarity is provided. The call for central filing is a clear benefit to secured creditors and, given easy access to the state system via computer or telephone, it is probably not of particular concern to debtors.

Revised Article 9, however, also includes an agricultural provision that is to the direct benefit to the secured lender but will generally be to the disadvantage of the debtor. Revised Article 9 removes the requirement of a real estate description from both the attachment and perfection provisions for growing crops.<sup>21</sup> Particularly because of the latter change, under Revised Article 9, it is easier for an operating lender to claim a security interest in all of the debtor's present and future crops, regardless of location. Crops grown on any acreage farmed by a farmer, even leased acreage not farmed when the security interest was granted, are now covered by a general interest in crops.<sup>22</sup>

Agricultural lienholders do not fare nearly as well under the changes of Revised Article 9. Although non-possessory statutory liens remain generally excluded from the coverage of Article 9,<sup>23</sup> the special category of "agricultural liens" is brought within Article 9 coverage.<sup>24</sup> Although this inclusion presents some advantages to agricultural lienholders, it may result in a significant priority disadvantage.

"Agricultural liens" are defined broadly as

[A]n 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:

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19. U.C.C. Revised Article 9, § 9-501(a).

20. Official Comment 2, U.C.C. Revised Article 9, § 9-501 (quoting Official Comment 1 to U.C.C. Former Article 9, § 9-401. Note, however, that some states have not adopted this change. See, e.g., Ark. Code Ann. § 4-9-501 (retaining county filing for farm related collateral).

21. U.C.C. Revised Article 9, §§ 9-203(b); 9-502(a).

22. Under the former Article 9 as well as Revised Article 9, a security interest in crops is likely to extend to all crops grown in the future as well as crops growing at the time value is given. U.C.C. Revised Article 9, § 9-204.

23. U.C.C. Revised Article 9, § 9-109(d)(1), (2).

24. U.C.C. Revised Article 9, § 4-9-109(a)(2).

- (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.<sup>25</sup>

Clearly, existing agricultural statutory liens fall within this definition and are now brought within the coverage of Article 9. Moreover, even though "landlord's liens" are specifically excluded from Revised Article 9,<sup>26</sup> the broad definition of "agricultural lien," includes agricultural landlord's liens.<sup>27</sup>

### III. The Significance of the Inclusion of Agricultural Liens

The inclusion of agricultural liens into the coverage of Revised Article 9 has significance in two major respects. First, it dramatically changes the rules for priority determinations, particularly when an agricultural lien is in conflict with a pre-existing security interest. Second, it gives agricultural lienholders the rights of secured parties in pursuing the collateral upon default.

#### A. Attachment, Perfection, and Priority

Statutory liens such as agricultural liens are not referenced in the attachment provisions of Revised Article 9, presumably because they arise by statute rather than agreement.<sup>28</sup> Revised Article 9 refers instead to the lien becoming "effective."<sup>29</sup> The statute creating the lien will govern when the lien is effective.<sup>30</sup>

Agricultural liens are covered, however, by the perfection and priority provisions of Revised Article 9. Section 9-308 provides that an agricultural lien is perfected "if it has become effective and all of the applicable requirements for perfection in §§ 9-310 - 9-316 have been satisfied."<sup>31</sup> Section 9-310 requires

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25. U.C.C. Revised Article 9, § 4-9-102(a)(5). Note that this definition does not apply to liens created to protect producers of farm products.

26. U.C.C. Revised Article 9, § 9-109(d)(1).

27. U.C.C. Revised Article 9, § 9-102(a)(5)(A)(ii).

28. U.C.C. Revised Article 9, § 9-203(a) (concerning the attachment of a security interest; reference to agricultural liens omitted).

29. U.C.C. Revised Article 9, § 9-308(b).

30. See Edwin E. Smith, *An Introduction to Revised UCC Article 9 (1999)*, in *THE NEW ARTICLE 9 UNIFORM COMMERCIAL CODE*, 17, 27 (Corrine Cooper, ed., 2<sup>nd</sup> ed. 2000). For example, under Arkansas law, a landlord's crop lien is effective as soon as the crop comes into existence. *Murphy v. Myar*, 128 S.W. 359 (1910).

31. U.C.C. Revised Article 9, § 9-308(b) (2001). This section also provides that an agricultural lien can be perfected at the time it becomes effective if all of the applicable perfection requirements are satisfied before the lien becomes effective. *Id.*

that a financing statement be filed in order to perfect either a security interest or an agricultural lien.<sup>32</sup> This is a new requirement for many agricultural liens, including many agricultural landlord's liens.<sup>33</sup>

With regard to priorities, Section 9-322 provides a general rule that conflicting perfected security interests and perfected agricultural liens rank in priority according to time of filing.<sup>34</sup> This general rule gives priority to pre-existing security interests, undercutting the special treatment previously afforded statutory lienholders.

Revised Article 9 provides one important exception to the general priority rule, however. Section 9-322(g) provides that a "perfected" agricultural lien will have priority over a conflicting security interest in the same collateral "if the statute creating the agricultural lien so provides."<sup>35</sup> This exception allows the lienholder's interest to "trump" a pre-existing security interest, but only if two requirements are met. First, the lien must be perfected, and second, the lien statute must establish the priority. Each of these requirements is discussed in turn.

### 1. The Perfection Requirement

The exception set forth in Section 9-322(g) provides that only a "perfected" agricultural lien will have priority over a conflicting security interest in the same collateral. Unperfected liens thus fall under the general rule, and under Revised Article 9, a perfected security interest or lien will always have priority over an unperfected agricultural lien.

As noted, in order for an agricultural lien to become perfected, a financing statement must be filed.<sup>36</sup> Section 502 of Revised Article 9 sets forth the required contents of a financing statement.<sup>37</sup> It must provide the name of the debtor, the name of the secured party,<sup>38</sup> and a description of the collateral.<sup>39</sup>

Applying the perfection requirement to many agricultural statutory liens, however, is somewhat problematic. Many lien statutes make no reference to filing.<sup>40</sup> Thus, this not only poses a new requirement, it is a requirement set forth in a different statute than that which creates the lien.

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32. U.C.C. Revised Article 9, § 4-9-310(a).

33. See, e.g., Ark. Code Ann. § 18-43-101 (1987).

34. U.C.C. Revised Article 9, § 4-9-322(a)(1). A perfected agricultural lien, however, will take priority over an unperfected security interest. U.C.C. Revised Article 9, § 9-322(a)(2).

35. U.C.C. Revised Article 9, § 9-322(g).

36. U.C.C. Revised Article 9, §§ 9-308(b), 9-310.

37. U.C.C. Revised Article 9, § 9-502(a).

38. The definition of secured party includes an agricultural lienholder. U.C.C. Revised Article 9, § 9-102(a)(72)(B).

39. U.C.C. Revised Article 9, § 9-502(a).

40. See, e.g., Ark. Code Ann. §18-41-101 (1987).

Nevertheless, Revised Article 9 provides the authority for such a filing. Section 9-509 authorizes a “person holding an agricultural lien that has become effective at the time of filing” to file a financing statement provided that it covers “only collateral in which the person holds an agricultural lien.”<sup>41</sup> The filing requirements are basic and should not pose a problem, provided that the lienholder is aware of the requirement.<sup>42</sup>

The place of filing presents two potentially confusing issues. As noted, the uniform provisions of Revised Article 9 call for central filing,<sup>43</sup> a dramatic change in most agricultural states. Due to entrenched county interests in at least one state (Arkansas), legislators chose not to adopt the recommended central filing system for farm related collateral such as crops.<sup>44</sup> This puts Arkansas filing procedures for this collateral at odds with the majority of other jurisdictions that have moved to central filing. Arkansas’s version of Revised Article 9 provides for local filing “if the debtor is engaged in a farming operation and the collateral is equipment used in farming operations, or farm products, or accounts arising from the sale of farm products.”<sup>45</sup> To perfect an interest in these items of collateral, filing is to be made in “the office of the circuit court in the county in which the debtor is located in this state . . .”<sup>46</sup> Based on this Arkansas approach, secured creditors and lienholders alike are cautioned to avoid assuming that a state has adopted Revised Article 9 without modification.

The second potential point of confusion concerns the application of the new law to cover farm products produced or marketed in cross-state farming operations. A filing problem can arise when “where the debtor is located” is not where the “farm products are located.” Similarly, a related but distinct problem occurs when the farm products cross jurisdictional lines. Each of these problems is discussed in turn.

#### a. The Law Controlling Perfection

The general rule under Revised Article 9 is that the law of the state where the debtor is located will determine the perfection of a security interest.<sup>47</sup> A secured creditor taking an interest in farm products,

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41. U.C.C. Revised Article 9, § 9-509(a)(2).

42. U.C.C. Revised Article 9, § 9-502(a). All that is required is the name of the debtor, the name of the secured party, and the collateral covered. Note that the definition of “secured party” includes agricultural lienholder. U.C.C. Revised Article 9, § 9-102(a)(73)(B).

43. U.C.C. Revised Article 9, § 9-501(a).

44. Ark. Code Ann. § 4- 9-501 (2001).

45. *Id.*

46. *Id.*

47. U.C.C. Revised Article 9, § 9-301 (“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.”). Note, however, that an exception is provided for goods, a category that includes farm products. This exception provides that although perfection will be determined according to the law of the debtor’s location, the effect of that perfection and the priority of a security interest will be determined according to the jurisdiction in which the collateral is located. U.C.C. Revised Article § 9-301(3)(c) (2001).

such as crops, must look to the state where the debtor is located, even if the crops are grown elsewhere.<sup>48</sup>

With regard to agricultural liens, however, a different rule applies. Revised Article 9 provides that “[w]hile 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 the farm products.”<sup>49</sup> Thus, in order to perfect an agricultural lien, the lienholder must comply with whatever perfection requirements exist in the state in which the farm products, e.g., crops, are located.

This combination of rules is demonstrated by considering a Mississippi-based farmer-debtor with farmland leased in both Mississippi and Arkansas. In order to perfect a security interest in the debtor’s crops, the creditor will look to the law of the state “where the debtor is located.”<sup>50</sup> In this example, the farmer’s operating lender would be required to file a financing statement with the Mississippi Secretary of State’s office in order to perfect a security interest in farm products including crops.<sup>51</sup> This filing will cover crops grown in both Mississippi and in Arkansas and the date of this filing will be the date of perfection of that security interest.

In contrast, the perfection of an agricultural lien is determined according to the law of the jurisdiction where the farm products are located.<sup>52</sup> Agricultural liens on growing crops in Arkansas must be perfected according to Arkansas law; a lien on Mississippi growing crops must be perfected according to Mississippi law. Because Mississippi has adopted a central filing system for all collateral, for Mississippi growing crops, the filing location is the Mississippi Secretary of State’s Office.<sup>53</sup> Arkansas law, however, provides that the filing should be in “the office of the circuit clerk in the county in which debtor is located in this state.” If the debtor resides in Arkansas, this gives clear direction to file the agricultural lien in the debtor’s circuit clerk’s office. But what of the debtor that is not located in this state? Although Arkansas law is not clear, it does provide for filing in the office of the Secretary of State “in all other cases.”<sup>54</sup> This rule should apply to agricultural liens on farm products when the debtor resides out of state. So, in this limited instance, it would appear that the lien should be filed with the Secretary of State in Arkansas, an office that generally will not have any other interest in farm products.

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48. If a debtor is an organization that has only one place of business, this is where the organization is considered to be located. U.C.C. Revised Article 9, § 9-307(b). If the organization has more than one place of business, it is located at the chief executive office. *Id.* The rules set forth do not lend themselves easily to farming operations that may not have a typical office.

49. U.C.C. Revised Article 9, §-9-302.

50. U.C.C. Revised Article 9, § 9-301; Miss. Code Ann. § 75-9-301 (2001).

51. Miss. Code Ann. §§ 75-9-308, 75-9-310 (2001).

52. U.C.C. Revised Article 9, § 9-302; Miss. Code Ann. § 75-9-302 (2001).

53. Miss. Code Ann. §§ 75-9-501 (2001).

54. U.C.C. Revised Article 9, § 9-501(a)(3).

## b. Change in Location of Farm Products

The rule that the perfection of an agricultural lien is tied to the location of the farm products also presents a problem if the farm products are moved across a state line. For agricultural liens, unlike security interests, the governing law will be the state in which farm products are located. Crops grown in Arkansas will be governed by Arkansas law, but if the farmer harvests the crops and transports them to a farm in Mississippi, Mississippi law will then govern the perfection and priority of the agricultural lien. In order to obtain protection in Mississippi, the lienholder would also have to file the agricultural lien in Mississippi's central filing system.

For security interests, Revised Article 9 provides that perfection will be maintained for four months after a change in the location of the debtor, but no such protection is provided for the holders of agricultural liens.<sup>55</sup> Lienholders are well advised to file according to the perfection systems for any state that the farm products are likely to be located.

### 2. Lien Statute Priority Provision

The second requirement for the application of the priority exception for agricultural liens in § 322(g) is that the statute creating the agricultural lien must provide for the priority.<sup>56</sup> The official comments explain:

Statutes other than this Article may purport to grant priority to an agricultural lien as against a conflicting security interest or agricultural lien. Under subsection (g), if another statute grants priority to an agricultural lien, that agricultural lien has priority only if the same statute creates the agricultural lien and the agricultural lien is perfected.<sup>57</sup>

Many agricultural lien statutes were drafted years ago, and many of the old statutes, as well as some of the new statutes, suffer from muddled drafting. As one author noted,

State lien statutes were enacted piecemeal over more than a century's time as political winds shifted and as special interest groups gained ascendancy. They were often drafted with indifferent skill, sketchily worded, and subjected to extensive engraftings of judicial construction.<sup>58</sup>

Thus, while the 9-322(g) priority statement requirement is straight forward and seemingly reasonable, it will not be met when applied to many agricultural statutory liens.

Consider, for example, the Arkansas agricultural landlord's lien statute, in existence in Arkansas since 1868. At the time that Arkansas adopted Revised Article 9, its agricultural landlord's lien statute did

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55. U.C.C. Revised Article 9, § 9-316(a).

56. U.C.C. Revised Article 9, § 9-322(g) ("A 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 lien so provides.*")

57. Official Comment 12, U.C.C. Revised Article 9, § 9-322.

58. Donald W. Baker, *Some Thoughts on Agricultural Liens Under the New U.C.C. Article 9*, 51 ALA. L. REV. 1417, 1424 (2000).

not address priority, but over a hundred years of judicial interpretations had confirmed the status of this lien as superior to all others.<sup>59</sup> Nevertheless, as written originally, this statute did not meet the priority statement requirement of 9-322(g).<sup>60</sup>

## B. Default Provisions

Part 6 of Revised Article 9 sets forth the rights and responsibilities of the “secured party” when the debtor defaults on a secured obligation. The definition of secured party, however, includes agricultural lienholders, so all provisions that discuss the rights of secured parties upon default now apply to agricultural lienholders as well.<sup>61</sup> This may well be a significant advantage to some agricultural lienholders, as frequently state statutes are vague about collection rights. Confusion may arise if the lien statute has specific enforcement procedures and requirements that continue in force after the enactment of Revised Article 9. There continues to be interplay between the agricultural lien law and Revised Article 9 in that default under an agricultural lien occurs at the time that the lienholder would be entitled to enforce the lien under the agricultural lien statute.<sup>62</sup>

Even if an agricultural lienholder has a priority interest under Revised Article 9, unlike a secured creditor, this interest will not automatically extend to the proceeds of the collateral. Although Revised Article 9 provides this protection for secured creditors, it does not provide it for agricultural lienholders.<sup>63</sup> The Official Comments provide that if an agricultural lien is entitled to priority under 9-322(g) and the statute that creates the lien provides for a continued lien on proceeds, then a court should award priority to the agricultural lienholder.<sup>64</sup>

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59. Tomlinson v. Greenfield, 31 Ark. 557, 558 (1876); Lambeth v. Ponder, 33 Ark. 707 (1878); Watson v. Johnson, 33 Ark. 737 (1878); Meyer v. Bloom, 37 Ark. 43 (1881); Ferniman v. Nowlin, 120 S.W. 2d 378, 380 (1909). See also, MARTHA L. NOBLE, STATUTORY AGRICULTURAL LIENS: RAPID FINDER CHARTS (National Center for Agricultural Law Research & Information, University of Arkansas School of Law 1993) (available from the National Center for Agricultural Law, 479-575-7647) (describing the agricultural landlord’s lien as “superior to all other liens and encumbrances, unless specifically waived by the landlord”).

60. This result caused the Arkansas legislature to adopt legislation that removed agricultural landlord’s liens from the definition of agricultural liens in Revised Article 9. A.C.R.C. Notes, Acts 2003 No. 32, § 1. The legislature noted that the General Assembly “inadvertently changed the law regarding landlords’ liens on crops” when it enacted Revised Article 9. The expressed intent of the bill was to correct this inadvertent change by removing these types of liens from the coverage of Revised Article 9 and “thereby make landlords’ liens . . . superior to all other liens on the same collateral.” *Id.* In addition, the legislature amended the landlord’s lien statute to provide expressly that such a lien “is perfected” and that it has priority.” Ark. Code Ann. § 18-41-101 (2003).

61. U.C.C. Revised Article 9, § 9-102(a)(73)(b).

62. U.C.C. Revised Article 9, § 9-606.

63. U.C.C. Revised Article 9, § 9-322(c)(2).

64. Official Comment 12, U.C.C. Revised Article 9, § 9-322.

## V. Suggestions and Conclusions

Although Revised Article 9 has received a good deal of attention in the legal community, it has not received much publicity in the agricultural community. Despite its significance, the inclusion of agricultural statutory liens within Revised Article 9 has not been highly publicized in the farm or rural press. Therefore, it is likely that the certainty promised by the revisions will not be found until lienholders and farm debtors learn that the rules of the game have changed.

State legislators could enhance clarity and certainty by conducting a review of all agricultural statutory liens within the context of the new Revised Article 9. Those that have valid support and that are deemed to provide important protection should be amended to comply with the requirements of § 4-9-322(g). Those that are no longer supported or deemed important should be removed.

To simplify those liens that relate to crop production and to provide farmers with added assistance in receiving crop financing credit the legislature should consider the optional Production-Money Security Interest set forth in the Appendix to the model provisions for Revised Article 9.<sup>65</sup> This provision recognizes the purchase money character of “new value” given for crop production and grants a priority security interest to those who provide it.<sup>66</sup>

In considering what liens to prioritize, the issue of availability of credit will no doubt be raised. Commercial lenders frequently argue that the availability of credit to the agricultural sector is directly related to the protections afforded to them. Proponents of this argument view the inclusion of agricultural liens into the coverage of Revised Article 9 as having benefits first for commercial creditors and ultimately for farm borrowers. On the other hand, however, the availability of credit from non-commercial sources is also affected by the rights afforded to these creditors. Thus, it is likely that when traditional agricultural lienholders such as crop input suppliers or agricultural landlords are uncertain of their rights to collect from crop sales, they will be more inclined to require cash rent up front. In this regard, diminishing the rights of statutory agricultural lienholders may be also be a problem for farmers.

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65. U.C.C. Revised Article 9, Appendix II, Model Provisions for Production-Money Priority (2000).

66. “New Value” is defined as “(i) money, (ii) money’s worth in property, services , or new credit, . . .” U.C.C. Revised Article 9, § 9-102(a)(57).