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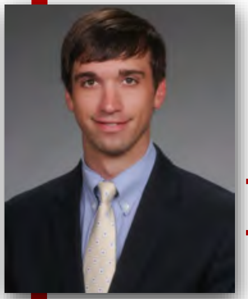

Community Bank Law Review

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Attention AG Lenders:

Arkansas's Livestock Owner's Lien Act May Change Your Priorities

Any agricultural lender operating within the State should take heed of the recent development in Arkansas's secured-transactions laws pertaining to sales of livestock. In 2013, the Arkansas General Assembly passed the Livestock Owner's Lien Act (the "Act"), granting livestock owners and their lenders a statutory lien to secure payment of the sales price due for the sale of the owner's stock. The term "livestock," as used in the Act,

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encompasses most every animal raised on a commercial level within the State. The Act broadly defines the term to include "cattle, bison, horses, sheep, goats, asses, mules, swine, domesticated rabbits, chickens, turkeys, and other domesticated animals raised primarily for human food consumption."

As of August 16, 2013 (the Act's effective date), the statutory owner's lien "exists in and attaches immediately to all livestock." No financing statement or documentation must be filed to perfect the lien -- the lien is perfected automatically on the date a sales agreement is executed and continues "uninterrupted and without lapse" in the livestock and its proceeds until the sales price is paid in full. The owner's statutory lien has priority over all other liens except for "permitted liens," which are essentially valid liens existing before the Act's effective date.

In addition to granting preferential status to livestock owners, the Act expressly provides that any security interest or mortgage lien in livestock held by an owner's lender attaches to the owner's right to the statutory lien, giving the lender a perfected lien in the livestock and its proceeds. The lender's lien continues, regardless of whether the lender approved or authorized the owner to sell the livestock, until full payment is received.

The Act provides additional benefits to livestock owners and their lenders in the event the livestock subject to the statutory lien are commingled with other livestock. Under the Act, if livestock subject to an existing owner's statutory lien are commingled with other livestock, the lien remains valid in proportion to the amount of the lien before the commingling occurred. An owner's statutory lien in commingled livestock continues to have priority over all other security interests or liens that are not an owner's statutory lien or "permitted lien" regardless of whether the interests or liens were properly perfect.

Further, the statutory lien's status cannot be unbridled by transferring possession of or title to livestock. The Act states that the validity of the owner's lien is neither dependent on possession of the livestock nor affected by "a change or transfer of the actual or constructive possession of or title to the livestock" from the owner to the original buyer or any subsequent buyers. The owner's statutory lien does not, however, apply to subsequent purchasers. To clarify, if the original buyer sells the livestock, the subsequent purchaser takes the livestock free from the owner's statutory lien if the subsequent buyer "pays the full amount of required consideration for the livestock under a good faith, noncollusive agreement to purchase the livestock." Instead, the owner's statutory lien continues uninterrupted in the proceeds paid by the subsequent purchaser to the original buyer. Since subsequent purchasers could have difficulties determining whether a statutory lien exists, the Act's statutory scheme is also beneficial to subsequent purchasers by eliminating the requirement that a subsequent purchaser know the identity of the livestock owner, which is necessary to gain the priority given to purchase-money security interests.

While a livestock buyer or its financier may attempt to bargain-away an owner's secured status during negotiations, any attempt to avoid the owner's preferential status under the Act would be futile. The Act expressly prohibits a buyer from conditioning a sale on the owner waiving or releasing the statutory lien, or agreeing to apply another state's laws with respect to the rights conferred on livestock owners by the Act. Any agreement to this effect is "void as a matter of [Arkansas's] public policy." Other than full payment of the sales price, a buyer may only obtain a waiver or release of the owner's statutory lien by posting a letter of credit, or by contracting with the owner to prepay or escrow the sales price and performing all of the obligations required by the contract.

The statutory owner's lien expires one year after the last day of the month following the date the owner should have received payment, unless the owner has brought suit to enforce the lien. Under the Act, a livestock owner has the choice of several venues in which to seek enforcement of a statutory lien. The Act permits an owner to bring suit to enforce a statutory lien in the district court of the county where either (1) the agreement was executed, (2) the sales price was to be paid, (3) the livestock are located, or (4) the proceeds may be found. Moreover, because it is often customary in the industry for sale barns, auctioneers, and brokers to bear the risk of payment, the livestock owner's sales agent can assume the owner's rights and seek enforcement of the statutory lien.

So, what does the Act mean to Arkansawyers transacting in livestock? For livestock sellers and their lenders, it means greater security in the event a buyer fails to pay after taking possession of the livestock. A good example of this added security is shown by the collapse and bankruptcy of Eastern Livestock Company, LLC ("Eastern"). Eastern was one of the largest cattle brokerage companies in the United States, buying and selling cattle across the county. In 2010, Eastern's main lender cancelled its credit line and froze its accounts, leaving Eastern unable to honor millions of dollars in checks written to cattle sellers whose cattle Eastern had "purchased" and resold. When Eastern was eventually forced into bankruptcy, the cattle sellers who had transferred possession of their cattle were unable to collect either their cattle or sale proceeds in light of the superior interest held by Eastern's lender. Had the cattle sellers transacting with Eastern and their lenders had the benefits provided by the Act, their interests would have been superior to most others, including Eastern's lender, and, therefore, their chances of receiving the benefits of their bargains, or their cattle back, would have been much greater.

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1. Ark. Code Ann. §§ 2-32-401 through 2-32-411.
2. *Id.* at § 2-32-402(5).
3. *Id.* at § 2-32-403(b)(1).
4. *Id.* at §§ 2-32-403(b)(2),(c)(1) and 2-32-404.
5. *Id.* at § 2-32-402(9)(A).
6. Ark. Code Ann. § 2-32-403(c)(2).
7. *Id.* at § 2-32-403(c)(3).
8. *Id.* at § 2-32-405(a).
9. *Id.* at § 2-32-405-(b).
10. *Id.* at § 2-32-403(d).
11. Ark. Code Ann. § 2-32-406(a)(1).
12. *Id.* at § 2-32-406(b),(c).
13. *See* Ark. Code Ann. § 4-9-324.
14. *Id.* at § 2-32-409(a)(1).
15. *Id.* at § 2-32-409(a)(2).
16. Ark. Code Ann. § 2-32-409(b).
17. *Id.* at § 2-32-410(a).
18. *Id.* at § 2-32-410(c)(1).

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