



TROUBLED AG LOANS AND CHAPTER 12

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Agriculture Lending

The agricultural economy continues to be an area of concern for Iowa banks, as 29-33 percent of the total loans in Iowa are agricultural loans. Hansen said “Bankers are doing a better job at basing loans on cash flow rather than collateral. We’re watching the current [ag] environment with our eyes wide open.”

Ron Hanson, Superintendent of the Iowa Division of Banking, quoted in *Iowa Bankers Exchange*, Volume 37, Issue 2, Summer 2018, p.22



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First Step – Due Diligence

When faced with a distressed loan, it is important that the Bank evaluate its options and available remedies as quickly as possible.

The best way to do this is to promptly conduct a thorough due diligence review of the Borrower's situation.



Major due diligence items and topics

- Review loan documents – has everything been properly executed by all parties?
 - Are the legal descriptions and collateral descriptions correct?
- Review UCC filings
 - Is everything up to date?
 - Was everything properly filed in the first place?
- Are all financial covenants and ratios in compliance?
- Obtain new tax, lien, and judgment searches on the Borrower and Guarantors.



Major due diligence items and topics

- Is the collateral secure?
 - Conduct on-site audit of all collateral to determine condition, location and existence.
- Are there other Secured Creditors?
 - If so, what are the lien and security interest priorities?
- Obtain copies of the Borrower's current (and recent historic) balance sheet, income statement, and statement of cash flows in order to determine how the Borrower's business is trending and as to what the Borrower's future abilities may be.



Inspect

Since the decline in grain prices, we have seen an increase in the number of instances where farmers converted grain and/or other commodities that were the lender's collateral. Lenders have been lax with their due diligence. Bins are not sealed, farm inspections and verifications have been reduced and local and regional buyers have not been notified of the lender's security interest in the property. It is now a necessity to protect the lender's interest.

Lenders need to be mindful, and the appropriate controls need to be reinstated, monitored and enforced.

Richard Gilmore, *Agricultural Asset Values in 2018*. Ag Banking. 1st Quarter 2018, p. 9



Agricultural Liens: Landlord's Lien - IA Code 570.1

- Lien for rent on all crops grown on leased premises and on other personal property of tenant used or kept thereon which is not exempt
- Automatically attaches to farm products grown on the land
- Has special priority ahead of previously perfected security interests and statutory liens
 - Ahead of Banks and Ag Supply Dealers
- Must file UCC-1 within 20 days of taking possession
- Continues for 1 year after rent is due or 6 months after end of lease, whichever is first



Agricultural Liens: Agricultural Supply Dealer's Lien – IA Code 570A.3

- Lien for retail cost of the ag supply, including labor provided.
- Applies to crops and livestock.
- Must file UCC-1 financing statement w/in 31 days after the initial purchase, and after any subsequent deliveries.
- Has equal priority with prior perfected bank lien.



Agricultural Liens: Harvester's Lien – IA Code 571.1B

- Lien for value of harvesting services that applies to the crops harvested by the harvester. Becomes effective/attaches at the time the services are rendered.
- Must file UCC-1 financing statement w/in 10 days after the last date that services were rendered
- Has priority over a conflicting security interest in the harvested crops regardless of when that security interest was perfected
- And has priority over a conflicting landlord's lien



Lien Priorities

- Ag Supply Dealer lien has equal priority to a lien or security interest created prior to the time of perfection. Eq. is equal to a Bank's security interest in collateral for an operating loan.
- Landlord's lien has priority over a conflicting Ag Supply Dealer lien
- Harvester's lien also has priority over a conflicting Ag Supply Dealer lien
- Super priority
- Ag feed dealer lien in livestock is special – has priority over earlier lien or security interest to the extent of the difference between the acquisition price of the livestock and the fair market value price of the livestock at the time the lien attaches to the sale price of the livestock. Whichever is greater.



Agricultural Supply Dealer's Lien: Certified Request Process

Ag Supply Dealer must provide certified request to other lenders who have provided operating liens to the farmer in order to enforce the Ag Supply Dealer Lien

After receiving a certified request, the lender – within 4 business days – must issue a memo to the Dealer stating whether or not the farmer has sufficient net worth or line of credit to make the payment. If the lender says yes, the memo operates as a letter of credit for a period of 30 days.



Initial Considerations

- Are there defects in the loan agreements, security interests and UCC filings that should be corrected?
- Can the Bank obtain additional collateral, security, or guarantees?
- Can the Borrower keep business going with some help?



Options

- Restructure the Loan
- Amend existing loan documents
- Enter into a new transaction
- Under either of these scenarios, amending the loan agreements or entering into a new loan transaction would effectively eliminate the default of the Borrower and any of the Lender's right arising as a result of the default.
- Extend Additional Credit (Be wary)



Options

- Forbearance Agreements can be a powerful and significant tool for Banks in distressed loan situations.
- Purpose is to provide Borrower time to bring the loan current in exchange for Bank not exercising its collection and enforcement remedies.
- In contrast to amending the Loan Agreements or entering into a new loan transaction, the Forbearance Agreement keeps the Borrower's default in place and provides additional leverage and consideration to the Bank in exchange for the forbearance of its rights stemming from the Borrower's default.



Options

- Better to forbear with respect to existing defaults than to waive Borrower's existing defaults.
- Deed in Lieu of Foreclosure
 - Bank obtains title to the Real Estate immediately
 - Junior Liens on the Real Estate are not removed by the process
 - No requirements of mediation or for notices of right to cure
 - If Borrower agrees, Bank may retain and pursue a deficiency against the Borrower (most Borrowers will require Bank to waive any deficiency)



Options

- File Lawsuit
 - Foreclosure Petition or Petition for Breach of Loan Documents if Forbearance Agreement cannot be worked out or has been violated.
 - Creditor is in better position having made such Court filings if a subsequent bankruptcy is filed.



Bankruptcy Filed

- Overview of Bankruptcy Chapters
- Chapter 12
 - Debts limited to \$4,153,150
 - 50% of income must be from family farming
 - Must file Plan w/in 90 days
 - However extensions and multiple plans can make case last up to and over one year



Initial Considerations Once Bankruptcy is Filed

- Stop Collection Activity, but...
 - Continue Conducting Due Diligence
- Is Collateral Secure and Where it Should be
- Review Debtor's Schedules and Statement of Financial Affairs
 - Does it match the information previously provided to the Bank



Creditor Remedies In Bankruptcy

- Relief From The Automatic Stay
- Objection to Debtor's Use of Cash Collateral
- Objection to Debtor's Plan
- Fraudulent Conveyances
- Objection to Exemptions
- SetOff
- Objection to Debtor's Discharge and/or Dischargeability of Bank's Debt



Questions?

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