



Select Year: 2009  

The 2009 Florida Statutes

Title XXXIX
COMMERCIAL
RELATIONS

Chapter 679
UNIFORM COMMERCIAL CODE: SECURED
TRANSACTIONS

[View Entire
Chapter](#)

679.1021 Definitions and index of definitions.--

(1) In this chapter, the term:

(a) "Accession" means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

(b) "Account," except as used in "account for," means a right to payment of a monetary obligation, whether or not earned by performance, for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of; for services rendered or to be rendered; for a policy of insurance issued or to be issued; for a secondary obligation incurred or to be incurred; for energy provided or to be provided; for the use or hire of a vessel under a charter or other contract; arising out of the use of a credit or charge card or information contained on or for use with the card; or as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state. The term includes health-care-insurance receivables. The term does not include rights to payment evidenced by chattel paper or an instrument; commercial tort claims; deposit accounts; investment property; letter-of-credit rights or letters of credit; or rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

(c) "Account debtor" means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.

(d) "Accounting," except as used in the term "accounting for," means a record:

1. Authenticated by a secured party;
2. Indicating the aggregate unpaid secured obligations as of a date not more than 35 days earlier or 35 days later than the date of the record; and
3. Identifying the components of the obligations in reasonable detail.

(e) "Agricultural lien" means an interest, other than a security interest, in farm products:



1. Which secures payment or performance of an obligation for:
 - a. Goods or services furnished in connection with a debtor's farming operation; or
 - b. Rent on real property leased by a debtor in connection with the debtor's farming operation;
 2. Which is created by statute in favor of a person who:
 - a. In the ordinary course of the person's business furnished goods or services to a debtor in connection with a debtor's farming operation; or
 - b. Leased real property to a debtor in connection with the debtor's farming operation; and
 3. Whose effectiveness does not depend on the person's possession of the personal property.
- (f) "As-extracted collateral" means:
1. Oil, gas, or other minerals that are subject to a security interest that:
 - a. Is created by a debtor having an interest in the minerals before extraction; and
 - b. Attaches to the minerals as extracted; or
 2. Accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.
- (g) "Authenticate" means:
1. To sign; or
 2. To execute or otherwise adopt a symbol, or encrypt or similarly process a record in whole or in part, with the present intent of the authenticating person to identify the person and adopt or accept a record.
- (h) "Bank" means an organization that is engaged in the business of banking. The term includes savings banks, savings and loan associations, credit unions, and trust companies.
- (i) "Cash proceeds" means proceeds that are money, checks, deposit accounts, or the like.
- (j) "Certificate of title" means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.
- (k) "Chattel paper" means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security

interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this paragraph, "monetary obligation" means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. The term does not include charters or other contracts involving the use or hire of a vessel or records that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.

(l) "Collateral" means the property subject to a security interest or agricultural lien. The term includes:

1. Proceeds to which a security interest attaches;
2. Accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and
3. Goods that are the subject of a consignment.

(m) "Commercial tort claim" means a claim arising in tort with respect to which:

1. The claimant is an organization; or
2. The claimant is an individual and the claim:
 - a. Arose in the course of the claimant's business or profession; and
 - b. Does not include damages arising out of personal injury to or the death of an individual.

(n) "Commodity account" means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

(o) "Commodity contract" means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is:

1. Traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws; or
2. Traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.

(p) "Commodity customer" means a person for which a commodity intermediary carries a commodity contract on its books.

(q) "Commodity intermediary" means a person who:

1. Is registered as a futures commission merchant under federal commodities law; or

2. In the ordinary course of the person's business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.

(r) "Communicate" means:

1. To send a written or other tangible record;
2. To transmit a record by any means agreed upon by the persons sending and receiving the record; or
3. In the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.

(s) "Consignee" means a merchant to which goods are delivered in a consignment.

(t) "Consignment" means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:

1. The merchant:
 - a. Deals in goods of that kind under a name other than the name of the person making delivery;
 - b. Is not an auctioneer; and
 - c. Is not generally known by its creditors to be substantially engaged in selling the goods of others;
2. With respect to each delivery, the aggregate value of the goods is \$1,000 or more at the time of delivery;
3. The goods are not consumer goods immediately before delivery; and
4. The transaction does not create a security interest that secures an obligation.

(u) "Consignor" means a person who delivers goods to a consignee in a consignment.

(v) "Consumer debtor" means a debtor in a consumer transaction.

(w) "Consumer goods" means goods that are used or bought for use primarily for personal, family, or household purposes.

(x) "Consumer-goods transaction" means a consumer transaction in which:

1. An individual incurs an obligation primarily for personal, family, or household purposes; and
2. A security interest in consumer goods secures the obligation.

(y) "Consumer obligor" means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family, or household purposes.

(z) "Consumer transaction" means a transaction in which an individual incurs an obligation primarily for personal, family, or household purposes; a security interest secures the obligation; and the collateral is held or acquired primarily for personal, family, or household purposes. The term includes consumer-goods transactions.

(aa) "Continuation statement" means an amendment of a financing statement which:

1. Identifies, by its file number, the initial financing statement to which it relates; and
2. Indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

(bb) "Debtor" means:

1. A person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;
2. A seller of accounts, chattel paper, payment intangibles, or promissory notes; or
3. A consignee.

(cc) "Deposit account" means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument.

(dd) "Document" means a document of title or a receipt of the type described in s. 677.201(2).

(ee) "Electronic chattel paper" means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.

(ff) "Encumbrance" means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.

(gg) "Equipment" means goods other than inventory, farm products, or consumer goods.

(hh) "Farm products" means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are:

1. Crops grown, growing, or to be grown, including:
 - a. Crops produced on trees, vines, and bushes; and
 - b. Aquatic goods produced in aquacultural operations;



2. Livestock, born or unborn, including aquatic goods produced in aquacultural operations;

3. Supplies used or produced in a farming operation; or

4. Products of crops or livestock in their unmanufactured states.

(ii) "Farming operation" means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.

(jj) "File number" means the number assigned to an initial financing statement pursuant to s. 679.519 (1).

(kk) "Filing office" means an office designated in s. 679.5011 as the place to file a financing statement.

(ll) "Filing-office rule" means a rule adopted pursuant to s. 679.526.

(mm) "Financing statement" means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

(nn) "Fixture filing" means the filing of a financing statement covering goods that are or are to become fixtures and satisfying s. 679.5021(1) and (2). The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.

(oo) "Fixtures" means goods that have become so related to particular real property that an interest in them arises under real property law.

(pp) "General intangible" means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software.

(qq) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(rr) "Goods" means all things that are movable when a security interest attaches. The term includes fixtures; standing timber that is to be cut and removed under a conveyance or contract for sale; the unborn young of animals; crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes; and manufactured homes. The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if the program is associated with the goods in such a manner that it customarily is considered part of the goods, or by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other

minerals before extraction.

(ss) "Governmental unit" means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a state, or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.

(tt) "Health-care-insurance receivable" means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health-care goods or services provided.

(uu) "Instrument" means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in the ordinary course of business is transferred by delivery with any necessary indorsement or assignment. The term does not include investment property, letters of credit, or writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

(vv) "Inventory" means goods, other than farm products, which:

1. Are leased by a person as lessor;
2. Are held by a person for sale or lease or to be furnished under a contract of service;
3. Are furnished by a person under a contract of service; or
4. Consist of raw materials, work in process, or materials used or consumed in a business.

(ww) "Investment property" means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.

(xx) "Jurisdiction of organization," with respect to a registered organization, means the jurisdiction under whose law the organization is organized.

(yy) "Letter-of-credit right" means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

(zz) "Lien creditor" means:

1. A creditor that has acquired a lien on the property involved by attachment, levy, judgment lien certificate, or the like;
2. An assignee for benefit of creditors from the time of assignment;

3. A trustee in bankruptcy from the date of the filing of the petition; or
4. A receiver in equity from the time of appointment.

(aaa) "Manufactured home" means a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. The term includes any structure that meets all of the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States Secretary of Housing and Urban Development and complies with the standards established under Title 42 of the United States Code.

(bbb) "Manufactured-home transaction" means a secured transaction:

1. That creates a purchase-money security interest in a manufactured home, other than a manufactured home held as inventory; or
2. In which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.

(ccc) "Mortgage" means a consensual interest in real property, including fixtures, which secures payment or performance of an obligation, which interest was created or derived from an instrument described in s. 697.01.

(ddd) "New debtor" means a person who becomes bound as debtor under s. 679.2031(4) by a security agreement previously entered into by another person.

(eee) "New value" means money; money's worth in property, services, or new credit; or release by a transferee of an interest in property previously transferred to the transferee. The term does not include an obligation substituted for another obligation.

(fff) "Noncash proceeds" means proceeds other than cash proceeds.

(ggg) "Obligor" means a person who, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral, owes payment or other performance of the obligation, has provided property other than the collateral to secure payment or other performance of the obligation, or is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit.

(hhh) "Original debtor," except as used in s. 679.3101(3), means a person who, as debtor, entered into a security agreement to which a new debtor has become bound under s. 679.2031(4).

(iii) "Payment intangible" means a general intangible under which the account debtor's principal

obligation is a monetary obligation.

(jjj) "Person related to," with respect to an individual, means:

1. The spouse of the individual;
2. A brother, brother-in-law, sister, or sister-in-law of the individual;
3. An ancestor or lineal descendant of the individual or the individual's spouse; or
4. Any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

(kkk) "Person related to," with respect to an organization, means:

1. A person directly or indirectly controlling, controlled by, or under common control with the organization;
2. An officer or director of, or a person performing similar functions with respect to, the organization;
3. An officer or director of, or a person performing similar functions with respect to, a person described in subparagraph 1.;
4. The spouse of an individual described in subparagraph 1., subparagraph 2., or subparagraph 3.; or
5. An individual who is related by blood or marriage to an individual described in subparagraph 1., subparagraph 2., subparagraph 3., or subparagraph 4. and shares the same home with the individual.

(lll) "Proceeds," except as used in s. 679.609(2), means the following property:

1. Whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;
2. Whatever is collected on, or distributed on account of, collateral;
3. Rights arising out of collateral;
4. To the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or
5. To the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.

(mmm) "Promissory note" means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank

has received for deposit a sum of money or funds.

(nnn) "Proposal" means a record authenticated by a secured party which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to ss. 679.620, 679.621, and 679.622.

(ooo) "Pursuant to commitment," with respect to an advance made or other value given by a secured party, means pursuant to the secured party's obligation, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from its obligation.

(ppp) "Record," except as used in the terms "for record," "of record," "record or legal title," and "record owner," means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(qqq) "Registered organization" means an organization organized solely under the law of a single state or the United States and as to which the state or the United States must maintain a public record showing the organization to have been organized.

(rrr) "Secondary obligor" means an obligor to the extent that:

1. The obligor's obligation is secondary; or
2. The obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

(sss) "Secured party" means:

1. A person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;
2. A person who holds an agricultural lien;
3. A consignor;
4. A person to whom accounts, chattel paper, payment intangibles, or promissory notes have been sold;
5. A trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for; or
6. A person who holds a security interest arising under s. 672.401, s. 672.505, s. 672.711(3), s. 680.508(5), s. 674.2101, or s. 675.118.

(ttt) "Security agreement" means an agreement that creates or provides for a security interest.

(uuu) "Send," in connection with a record or notification, means:

1. To deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or
2. To cause the record or notification to be received within the time that it would have been received if properly sent under subparagraph 1.

(vvv) "Software" means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.

(www) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(xxx) "Supporting obligation" means a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, a document, a general intangible, an instrument, or investment property.

(yyy) "Tangible chattel paper" means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.

(zzz) "Termination statement" means an amendment of a financing statement which:

1. Identifies, by its file number, or if a fixture filing, by the official records book and page number, the initial financing statement to which it relates; and
2. Indicates either that it is a termination statement or that the identified financing statement is no longer effective.

(aaaa) "Transmitting utility" means a person primarily engaged in the business of:

1. Operating a railroad, subway, street railway, or trolley bus;
2. Transmitting communications electrically, electromagnetically, or by light;
3. Transmitting goods by pipeline or sewer; or
4. Transmitting or producing and transmitting electricity, steam, gas, or water.

(2) The following definitions in other chapters apply to this chapter:

"Applicant"



	s. 675.103.
"Beneficiary"	
	s. 675.103.
"Broker"	
	s. 678.1021.
"Certificated security"	
	s. 678.1021.
"Check"	
	s. 673.1041.
"Clearing corporation"	
	s. 678.1021.
"Contract for sale"	
	s. 672.106.
"Customer"	
	s. 674.104.
"Entitlement holder"	
	s. 678.1021.
"Financial asset"	
	s. 678.1021.
"Holder in due course"	
	s. 673.3021.
"Issuer" (with respect to a letter of credit or letter-of-credit right)	

	s. 675.103.
"issuer" (with respect to a security)	
	s. 678.2011.
"Lease"	
	s. 680.1031.
"Lease agreement"	
	s. 680.1031.
"Lease contract"	
	s. 680.1031.
"Leasehold interest"	
	s. 680.1031.
"Lessee"	
	s. 680.1031.
"Lessee in ordinary course of business"	
	s. 680.1031.
"Lessor"	
	s. 680.1031.
"Lessor's residual interest"	
	s. 680.1031.
"Letter of credit"	
	s. 675.103.
"Merchant"	

s. 672.104.

"Negotiable instrument"

s. 673.1041.

"Nominated person"

s. 675.103.

"Note"

s. 673.1041.

"Proceeds of a letter of credit"

s. 675.114.

"Prove"

s. 673.1031.

"Sale"

s. 672.106.

"Securities account"

s. 678.5011.

"Securities intermediary"

s. 678.1021.

"Security"

s. 678.1021.

"Security certificate"

s. 678.1021.

"Security entitlement"

s. 678.1021.



"Uncertificated security"

s. 678.1021.

(3) Chapter 671 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

History.--s. 1, ch. 2001-198; s. 1, ch. 2002-242; s. 19, ch. 2005-241.



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COMMERCIAL
RELATIONS

Chapter 679
UNIFORM COMMERCIAL CODE: SECURED
TRANSACTIONS

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679.610 Disposition of collateral after default.--

(1) After default, a secured party may sell, lease, license, or otherwise dispose of any or all of the collateral in its present condition or following any commercially reasonable preparation or processing.

(2) Every aspect of a disposition of collateral, including the method, manner, time, place, and other terms, must be commercially reasonable. If commercially reasonable, a secured party may dispose of collateral by public or private proceedings, by one or more contracts, as a unit or in parcels, and at any time and place and on any terms,

(3) A secured party may purchase collateral:

(a) At a public disposition; or

(b) At a private disposition only if the collateral is of a kind that is customarily sold on a recognized market or the subject of widely distributed standard price quotations.

(4) A contract for sale, lease, license, or other disposition includes the warranties relating to title, possession, quiet enjoyment, and the like which by operation of law accompany a voluntary disposition of property of the kind subject to the contract.

(5) A secured party may disclaim or modify warranties under subsection (4):

(a) In a manner that would be effective to disclaim or modify the warranties in a voluntary disposition of property of the kind subject to the contract of disposition; or

(b) By communicating to the purchaser a record evidencing the contract for disposition and including an express disclaimer or modification of the warranties.

(6) A record is sufficient to disclaim warranties under subsection (5) if it indicates that "there is no warranty relating to title, possession, quiet enjoyment, or the like in this disposition" or uses words of similar import.

History.--s. 7, ch. 2001-198.

714 So.2d 1154

Lloyd v. Brendemuehl, 714 So.2d 1154 (Fla.App. Dist.5 07/24/1998)

714 So.2d 1154, 1998.FL.2967

Florida Court of Appeals

Case No. 97-2220

714 So.2d 1154, 1998.FL.2967

July 24, 1998

CHARLES A. LLOYD, APPELLANT, v.
DANZEL BRENDEMUEHL D/B/A
CLASSIC BLOODSTOCK FARM,
APPELLEE.

Irwin J. Weiner, Ocala, for Appellant.
Daniel Hicks, Ocala, and Barry W. Rorex,
Pro Hac Vice, Ocala, for Appellee.

The opinion of the court was delivered by:
Peterson, J

[8] JULY TERM 1998

[9] Appeal from the Circuit Court for
Marion County, William T. Swigert,
Judge.

[10] Charles A. Lloyd appeals a
declaratory judgment proclaiming
subsection 85.031(2), Florida Statutes
(1995), constitutional. The statute provides
a creditor with a procedure to follow in
order to conduct a public sale of property
subject to a lien without judicial
proceedings under certain conditions.
Lloyd's three thoroughbred horses were
sold at a public sale held by Danzel
Brendemuehl for recovery of fees owed to
him for the care of Lloyd's horses. Lloyd
had attempted to make payment with a
check but his check was returned for
insufficient funds. We affirm.

[11] Section 713.65, Florida Statutes
(1995) creates a lien in favor of all persons
who provide for the care and maintenance
of horses and other animals. The lien may
be enforced or foreclosed in the traditional
manner through judicial process, or it may
be enforced through the self-help
provisions of section 85.031. That section
provides:

[12] 85.031 Remedies against personal
property only; all lienors.--

[13] (2) BY SALE WITHOUT JUDICIAL
PROCEEDINGS. When any person
entrusts to any mechanic or laborer,
materials with which to construct, alter, or
repair any article of value, or any article of
value to be altered or repaired, and if the
article is completed and not taken away,
and the reasonable charges not paid, such
mechanic or laborer may sell it after 3
months from the time such charges become
due at public auction for cash but before
the sale the mechanic or laborer shall give
public notice of the time and place thereof,
by notices posted for 10 days in 3 public
places in the county, one of which shall be
at the courthouse, and another in some
conspicuous part of his or her shop or
place of business. The proceeds of the sale,
after payment of charges for construction
or repair with the costs of the sale, shall be
deposited with the clerk of the circuit court
for the county, if the owner is absent,
where they shall remain subject to the
order of the person legally entitled thereto.
The clerk shall be entitled to receive 5
percent on the proceeds for the care and
disbursement thereof. Any person claiming

a lien under s. 713.65, of part II of chapter 713, may enforce it by sale without judicial proceedings in the manner set forth herein after 1 month after the time the charges for which a lien is claimed become due.

[14] (Emphasis added).

[15] Lloyd asserts that this statute violates the due process requirements of the United States and Florida Constitutions because it deprives a person of his property without adequate notice and a pre-sale hearing to contest the validity of the lien.

[16] The threshold question in any judicial inquiry into conduct claimed to be violative of the due process clause of the Fourteenth Amendment of the United States Constitution, is whether the state has in some fashion involved itself in what, in another setting, would otherwise be deemed private activity. *fn1 *Northside Motors of Florida, Inc. v. Brinkley*, 282 So.2d 620 (Fla. 1973) (Fourteenth Amendment is directed solely to state action and individual invasion of individual rights is not the subject matter thereof). This is made plain by the express terms of the Fourteenth Amendment which specifies that "nor shall any state deprive any person of life, liberty, or property without due process of law" (emphasis added). The same "state action" requirement applies to the due process clause of our state constitution. Art. I, § 9, Fla. Const. ("No person shall be deprived of life, liberty or property without due process of law . . .").

[17] We find the decisions in *Flagg Brothers, Inc. v. Brooks*, 436 U. S. 149 (1978) and *Comstock Investment Corp. v. Kaniksu Resort*, 793 P.2d 222 (Idaho 1990) dispositive on the issue of whether the requisite state action is present in the

instant Florida statute under dispute. In addressing the constitutionality of an Idaho statute, the appellate court stated:

[18] We next address the constitutionality of I.C. § 45-805. The boat owner contends that the statute is infirm because it authorizes a sale without expressly requiring "actual" notice to the property owner, or a judicial hearing. The version of the statute applicable here simply requires that a notice of sale be published in a newspaper in the county where the property is located. This was done. The boat owner argues that such notice is inadequate -- that it denies procedural due process in violation of the Fourteenth Amendment to the United States Constitution.

[19] [4] The argument is not persuasive, legally or factually. From a legal standpoint, it runs afoul of the axiom that a due process issue must be framed by state action. The lien sale procedure authorized by I.C. § 45-805 is a self-help remedy. The United States Supreme Court has held, in *Flagg Brothers, Inc. v. Brooks*, 436 U.S. 149, 98 S.Ct. 1729, 56 L.Ed.2d 185 (1978), that the self-help provision of a statute creating a warehouseman's lien does not constitute state action. Similarly, the Idaho Supreme Court has determined in *Massey-Ferguson Credit Corp. v. Peterson*, 102 Idaho 111, 626 P.2d 767 (1980), that self-help repossession under Article 9 of the Uniform Commercial Code does not constitute state action invoking the Fourteenth Amendment. We find these cases to be controlling.

[20] *Comstock Investment* at 227-28. (Footnote omitted).

[21] In *Flagg Brothers*, a case involving a New York statute, the U.S. Supreme Court

stated:

[22] It is quite immaterial that the State has embodied its decision not to act in statutory form. If New York had no commercial statutes at all, its courts would still be faced with the decision whether to prohibit or to permit the sort of sale threatened here the first time an aggrieved bailer came before them for relief. A judicial decision to deny relief would be no less an "authorization" or "encouragement" of that sale than the legislature's decision embodied in this statute. It was recognized in the earliest interpretations of the Fourteenth Amendment "that a State may act through different agencies,--either by its legislative, its executive, or its judicial authorities; and the prohibitions of the amendment extend to all action of the State" infringing rights protected thereby. *Virginia v Rives* 100 US 313, 318, 25 L Ed 667 (1880). If the mere denial of judicial relief is considered sufficient encouragement to make the State responsible for those private acts, all private deprivations of property would be converted into public acts whenever the State, for whatever reason, denies relief sought by the putative property owner.

[23] Not only is this notion completely contrary to that "essential dichotomy," *Jackson*, *supra*, at 349, 42 L Ed 2d 477, 95 S Ct 449, between public and private acts, but it has been previously rejected by this Court. In *Evans v. Abney*, 396 US 435, 458, 24 L Ed 2d 634, 90 S Ct 628 (1970), our Brother Brennan in Dissent contended that Georgia statutory provision authorizing the establishment of trusts for racially restricted parks conferred a "special power" on testators taking advantage of the provision. The Court nevertheless concluded that the State of

Georgia was in no way responsible for the purely private choice involved in that case. By the same token, the State of New York is in no way responsible for Flagg Brothers' decision, a decision which the State in §7-210 permits but does not compel, to threaten to sell these respondents' belongings.

[24] Here, the State of New York has not compelled the sale of a bailor's goods, but has merely announced the circumstances under which its courts will not interfere with a private sale. Indeed, the crux of respondents' complaint is not that the State has acted, but that it has refused to act. This statutory refusal to act is no different in principle from an ordinary statute of limitations whereby the State declines to provide a remedy for private deprivations of property after the passage of a given period of time.

[25] We conclude that the allegations of these complaints do not establish a violation of these respondents' Fourteenth Amendment rights by either respondent Flagg Brothers or the State of New York. The District Court properly concluded that their complaints failed to state a claim for relief under 42 USC § 1983 [42 USCS § 1983]. The judgment of the Court of Appeals holding otherwise is reversed.

[26] Flagg Brothers at 199.

[27] Likewise, we find the Florida legislature has not invoked state action through the self-help provisions of subsection 85.031(2), Florida Statute (1995), and that therefore, the statute is not violative of the due process clauses of the United States and Florida Constitutions.

[28] Notwithstanding, we note that subsection 85.031(2) was enacted over

thirty years ago and its notice provision could stand some modernization. Posting a notice of proposed sale in three places in the county may have been sufficient in times gone by. Perhaps the statute should be amended to at least provide that notice by certified mail be sent to the last known address of the debtor advising of the amount of the lien, and the date, time and location of the sale.

[29] We also note that a debtor has pre-sale and post-sale judicial remedies not emanating from this statute that are available to test the propriety of a private sale pursuant to subsection 85.031(2) if the indebtedness is believed to be unjust. The appellant has done that in his complaint and the procedure followed by the creditor will be considered upon remand.

[30] We affirm the trial court's determination that section 85.031, Florida Statutes (1995) is constitutional. We remand to the circuit court to dispose of the remaining issues raised by Lloyd as to compliance with subsection 85.031(2), Florida Statutes (1995).

[31] AFFIRMED AND REMANDED.

[32] THOMPSON, J., concurs.

[33] GRIFFIN, C.J., concurs in result only.

Opinion Footnotes

[34] *fn1 Neither Lloyd nor Brendemuchl addressed this threshold inquiry regarding state action.

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Appendix “D”

California Lien Statutes and UCC Provisions

CIVIL CODE

SECTION 3080-3080.22

3080. As used in this chapter, the following definitions shall apply:

(a) "Livestock" means any cattle, sheep, swine, goat, or horse, mule, or other equine.

(b) "Livestock servicer" means any individual, corporation, partnership, joint venture, cooperative, association or any other organization or entity which provides livestock services.

(c) "Livestock services" means any and all grazing, feeding, boarding, general care, which includes animal health services, obtained or provided by the livestock servicer, or his employee, transportation or other services rendered by a person to livestock for the owner of livestock, or for any person acting by or under the owner's authority.

3080.01. A livestock servicer shall have a general lien upon the livestock in its possession to secure the performance of all obligations of the owner of the livestock to the livestock servicer for both of the following:

(a) The provision of livestock services to the livestock in possession of the livestock servicer.

(b) The provision of livestock services to other livestock for which livestock services were provided in connection with or as part of the same livestock service transaction, if such livestock services were provided within the immediately preceding 12 months prior to the date upon which the lien arose. The lien shall have priority over all other liens upon and security interests in the livestock, shall arise as the charges for livestock services become due, and shall be dependent upon possession. The lien shall secure the owner's contractual obligations to the lienholder for the provision of livestock services, the lienholder's reasonable charges for the provision of livestock services after the lien has arisen as set forth in Section 3080.02, and the lienholder's costs of lien enforcement, including attorney's fees.

3080.02. In addition to any other rights and remedies provided by law, a lienholder may:

(a) Retain possession of the livestock and charge the owner for the reasonable value of providing livestock services to the livestock until the owner's obligations secured by the lien have been satisfied.

(b) Proceed to sell all or any portion of the livestock pursuant to Section 3080.16 if:

(1) A judicial order authorizing sale has been entered pursuant to Section 3080.06;

(2) A judgment authorizing sale has been entered in favor of the lienholder on the claim which gives rise to the lien; or

(3) The owner of the livestock has released, after the lien has arisen, its interest in the livestock in the form prescribed by Section 3080.20.

(c) A lienholder may commence a legal action on its claim against

the owner of the livestock or any other person indebted to the lienholder for services to the livestock and reduce the claim to judgment. When the lienholder has reduced the claim to judgment, any lien or levy or other form of enforcement which may be made upon the livestock by virtue of any execution based upon the judgment shall relate back to the attachment of and have the same priority as the livestock service lien. The lienholder may purchase at a judicial sale held pursuant to the execution on the judgment and thereafter hold the livestock free of any liens upon or security interests in the livestock.

3080.03. Upon the filing of the complaint, or at any time thereafter prior to judgment, the lienholder may apply to the court in which the action was commenced for an order authorizing sale of livestock.

(a) The application shall include all of the following:

(1) A statement showing that the sale is sought pursuant to this chapter to enforce a livestock service lien;

(2) A statement of the amount the lienholder seeks to recover from the defendant and the date that amount became due;

(3) A statement setting forth the reasons why a sale should be held prior to judgment;

(4) A description of the livestock to be sold and an estimate of the fair market value thereof; and

(5) A statement of the manner in which the lienholder intends to sell the livestock. The statement shall include, but not be limited to, whether the sale will be public or private, the amount of proceeds expected from the sale, and, why the sale, if authorized, would conform to the standard of commercial reasonableness set forth in Section 3080.16.

(b) The application shall be supported by an affidavit or affidavits showing that on the facts presented therein the lienholder would be entitled to a judgment on the claim upon which the action is brought.

(c) A hearing shall be held in the court in which the lienholder has brought the action before an order authorizing sale is issued under this chapter. Except as provided in Section 3080.15, or as ordered by the court upon good cause shown, the defendant shall be served with a copy of all of the following at least 10 days prior to the date set for hearing:

(1) A summons and complaint;

(2) A notice of application and hearing; and

(3) An application and all affidavits filed in support thereof.

3080.04. The notice of application and hearing shall inform the defendant of all of the following:

(a) The date, time and place of the hearing on the application;

(b) That the order will issue if the court finds, after hearing, that the lienholder has established the probable validity of the claim and has satisfied the other requirements set forth in this chapter;

(c) The hearing is not held for the purpose of determining the actual validity of the claim which determination will be made in other proceedings in the action and will not be affected by the findings made at the hearing on the application for the order;

(d) If the order authorizing sale is issued, the lienholder may

proceed to sell the livestock in the manner set forth in the order, and the sale proceeds will be deposited with the court pending judgment on the lienholder's claim;

(e) If the defendant desires to oppose the issuance of the order, the defendant must file with the court and serve on the lienholder a notice of opposition and supporting affidavit as required by Section 3080.05 no later than three days prior to the date set for hearing;

(f) At the hearing, the court may deny the lienholder's application if the defendant files an undertaking as set forth in Section 3080.11; and

(g) The notice shall contain the following statement: "You may seek the advice of an attorney as to any matters concerning the lienholder's complaint and application. If an attorney is to assist you, he or she should be consulted promptly. You or your attorney or both of you may be present at the hearing."

3080.05. (a) If a defendant desires to oppose the issuance of an order authorizing sale the defendant shall file and serve upon the lienholder a notice of opposition no later than three days prior to the date set for hearing. The notice shall:

(1) State the grounds upon which the defendant opposes the order;

(2) Be accompanied by an affidavit or affidavits supporting any factual issues raised;

(3) State whether the defendant is prepared to file an undertaking as provided in Section 3080.11; and

(4) If the defendant is prepared to file an undertaking, include an estimate of the amount of such undertaking as set forth in Section 3080.09 and the defendant's basis for the estimate.

(b) Except when the lienholder has made an ex parte application for an order as set forth in Section 3080.15, or for good cause shown, a defendant shall not be permitted to oppose the issuance of an order if it has failed to file a notice of opposition within the time prescribed.

3080.06. (a) At the hearing, the court shall consider the showing made by the parties and shall issue an order authorizing the sale of the livestock if it finds all of the following:

(1) The claim upon which the lienholder's action is based is a claim giving rise to a lien upon which an order authorizing sale may be issued under this chapter;

(2) The lienholder has established the probable validity of the claim upon which the action is based;

(3) The lienholder has established the probable validity of the lien sought to be enforced by sale;

(4) The sale is necessary to prevent a possible decline in the value or condition of the livestock or that the sale should be held in the interest of equity;

(5) The sale is not sought for a purpose other than the recovery on the claim upon which the lien is based; and

(6) The sale, if conducted in the manner set forth in the application, would be conducted in a commercially reasonable manner.

(b) The order authorizing sale shall:

(1) Identify the livestock for which sale is authorized;

(2) Specify the manner of sale including the date, time, place, necessary publication or other notice; and

(3) Except as may be ordered pursuant to subdivision (c), direct the lienholder to deposit the proceeds of sale with the clerk of the

court pending final judgment in the action.

(c) The court may in its discretion do either of the following:

(1) Authorize the lienholder to deduct and retain funds from the sale proceeds in an amount sufficient to compensate the lienholder for services provided to the livestock from the date that the lien arose until the date of sale.

(2) Determine the amount of sale proceeds reasonably necessary to satisfy the indebtedness secured by the livestock service lien and order any portion or all of the remaining sale proceeds distributed and applied as set forth in paragraph (3) of subdivision (c) of Section 3080.16.

The balance of sale proceeds, if any, remaining after any deductions authorized in this section shall be deposited with the clerk of the court pursuant to this section.

3080.07. (a) After hearing, the court may issue an order denying the lienholder's application if it finds that:

(1) A sale is not necessary prior to judgment; and

(2) The defendant has filed an undertaking pursuant to Section 3080.11.

(b) If the defendant has filed an undertaking pursuant to Section 3080.11, the order shall direct the lienholder to assemble and make the livestock available to defendant, or to defendant's agent, at a specified date, time and place.

3080.08. (a) The court's findings at the hearing shall be made upon the basis of the pleadings and other papers in the record. Upon cause shown, the court may receive and consider additional oral or documentary evidence or points and authorities at the hearing, or it may continue the hearing to allow the production of such additional evidence or points and authorities.

(b) The court's findings at the hearing shall have no effect on the determination of any issues in the action other than issues relevant to the proceedings authorized by this chapter, nor shall they affect the rights of the defendant in any other action arising out of the same claim. The court's determinations at the hearing shall neither be admissible as evidence nor referred to at the trial of any such action.

(c) Neither the failure of the defendant to oppose the issuance of an order authorizing sale, nor the defendant's failure to rebut any evidence produced by the lienholder at the hearing held for the issuance of such order, shall constitute a waiver of any defense to the lienholder's claim in the action or in any other action or have any effect on the right of the defendant to produce or exclude evidence at the trial of such action.

3080.09. (a) At any time after the lienholder has filed a complaint and claimed a lien under this chapter, or at any time after the owner of the livestock has commenced an action to recover possession of the livestock, the owner of the livestock may apply to the court in which the action was brought for an order for substitution of an undertaking which meets the requirements of Section 3080.11 for the livestock held by the lienholder.

(b) The application for such order shall be executed under oath and, unless included within a notice of opposition to sale as set

forth in Section 3080.05, or except for good cause shown, shall be made upon noticed motion. Unless the parties otherwise agree, a hearing shall be held on the motion not less than five nor more than 10 days after service of notice of motion. The application shall contain all of the following:

- (1) A description of the livestock to be recovered;
- (2) An estimate and the basis for the estimate of the fair market value of the livestock;
- (3) A statement identifying and describing the sureties for the undertaking.

3080.10. After hearing, the court may enter an order directing the lienholder to release all or a portion of the livestock to the owner, or to the owner's agent. The order shall be conditioned upon the filing by the owner of an undertaking as set forth in Section 3080.11, and shall include all of the following:

- (1) The amount of the undertaking required.
- (2) The basis for the court's finding as to the fair market value of the livestock.
- (3) A statement that the lienholder has the right to object to the undertaking pursuant to Section 995.910 of the Code of Civil Procedure.
- (4) A description of the livestock to be substituted.
- (5) A statement of the date, time, place and manner in which the lienholder is to turn over the livestock to the owner.

3080.11. The undertaking to be substituted for livestock shall be by the owner to pay to the lienholder an amount equal to the sum of (1) the fair market value of the livestock sought to be recovered, and (2) the costs to be incurred by the lienholder in order to assemble and turn over the livestock.

3080.15. (a) Except as otherwise provided by statute, or upon noticed hearing as provided in this chapter, no order authorizing sale or order for substitution of undertaking for livestock may issue unless it appears from facts shown by affidavit that great or irreparable injury would result to the party seeking the order if the issuance of the order were delayed until the matter could be heard upon noticed hearing.

(b) In addition to a specific statement of the facts showing great or irreparable injury, any application made under this section for either an order authorizing sale or an order substituting undertaking for livestock shall include the substantive requirements of an application made under Section 3080.03 or Section 3080.09, respectively.

(c) The court shall examine the ex parte application, supporting affidavits and other papers on record and may issue the order sought if it finds all of the following:

- (1) The party seeking the order is entitled to the order under the substantive provisions of this chapter;
- (2) The party seeking the order will suffer great and irreparable injury if the order is not issued; and
- (3) If the ex parte application is made for an order authorizing sale, the court determines that the condition of the livestock will greatly deteriorate or the value of the livestock will greatly

depreciate before an order authorizing sale could be obtained pursuant to noticed hearing.

(d) An order issued under this section shall contain such provisions as the court determines to be in the interests of justice and equity to the parties, taking into account the effects on all parties under the circumstances of the particular case. If an order authorizing sale issues under this section, the court may authorize the lienholder to take any action necessary to preserve the value of the livestock so long as the court has determined that such action would be commercially reasonable under the circumstances.

(e) Upon ex parte application of any party affected by an order issued under this section or, if the court so orders, after a noticed hearing, the court may modify or vacate the order if it determines that such action would be proper under the circumstances.

3080.16. (a) Except as otherwise specified by the order authorizing sale or as agreed to by the parties after the lien has arisen, a sale of livestock under this chapter may be held in bulk or in parcels, at wholesale or retail, and at any time and place and on any terms, provided the lienholder acts in good faith and in a commercially reasonable manner. The livestock may be sold in its existing condition or following any commercially reasonable preparation or processing. The fact that a better price could have been obtained by a sale at a different time or in a different manner from that selected by the lienholder is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the lienholder either sells the livestock in the usual manner in any recognized market therefor or sells at the price current in such market at the time of the sale or, if it has otherwise sold in conformity with reasonable commercial sales practices for the type of livestock sold, it has sold in a commercially reasonable manner.

(b) Except as otherwise specified by order of the court, or as agreed to by all interested parties after the lien has arisen, the proceeds of sale shall be deposited with the clerk of the court in an interest-bearing account to abide the judgment in the action.

(c) Except as otherwise specified in the judgment in the action, the proceeds of sale shall be applied in the following order:

(1) For reasonable expenses incurred by the lienholder in enforcing the lien, including, but not limited to, the charges for livestock services from the date the lien arose to the date of sale; the costs of transporting and preparing the livestock for sale and of conducting the sale; and, the reasonable attorneys' fees and legal costs and expenses incurred by the lienholder;

(2) For satisfaction of the contractual indebtedness secured by the lien; and

(3) For satisfaction of indebtedness secured by any subordinate lien or security interest in the livestock if written notification or demand therefor is received by the court or the lienholder before the proceeds have been distributed. If requested by the lienholder, the holder of a subordinate lien or security interest must seasonably furnish reasonable proof to the court of its subordinate interest before the lienholder need comply with the demand.

(d) The lienholder must account to the owner of the livestock for any surplus and, unless otherwise provided in the judgment in the action, the owner shall be liable for any deficiency.

3080.17. Except as otherwise agreed or specified by order of court, notice of sale shall be given as follows:

(a) A notice in writing of the date, time and place of sale shall be delivered personally or be deposited in the United States mail, postage prepaid, addressed to the owner of the livestock, at his last known address, and to any other person claiming a lien upon or security interest in the livestock, who had on file with the California Secretary of State on the date the lien arose a financing statement covering the livestock for which livestock services secured by the lien were provided at least five days before the date fixed for any public sale or before the day on or after which any private sale or other disposition is to be made.

(b) Notice of the time and place of a public sale shall also be given at least five days before the date of sale by publication once in a newspaper of general circulation published in the county in which the sale is to be held. If there is no such newspaper, notice shall be given by posting, for five days prior to sale, a notice of sale where the sale is to be conducted.

3080.18. (a) Any sale of which notice is delivered or mailed and published as provided in this chapter and which is held as provided in this chapter is a public sale.

(b) Any public sale may be postponed from time to time by public announcement at the time and place last scheduled for sale.

(c) The lienholder may purchase the livestock at a public sale.

3080.19. (a) A sale of livestock held pursuant to this chapter shall:

(1) Transfer to a purchaser for value all of the owner's rights in the livestock; and

(2) Discharge the lien under which the sale is made and any lien or security interest subordinate thereto.

(b) The purchaser shall take free of all such subordinate rights and interests even though the lienholder fails to comply with the requirements of this chapter or of any judicial proceeding if:

(1) In the case of a public sale, the purchaser has no knowledge of any defects in the sale and does not buy in collusion with the lienholder, other bidders or the person conducting the sale; or

(2) In any other case, the purchaser acts in good faith.

3080.20. (a) The owner of livestock or any other person claiming an interest in livestock may release its interest in the livestock at any time after the lien has arisen. The release shall be in writing and dated when signed. A copy of the release shall be given to the person releasing the interest at the time the release is signed.

(b) The release shall contain all of the following information in simple, nontechnical language:

(1) A description of the livestock covered by the release and the releasing party's interest in the livestock;

(2) A statement of the amount of the lien to which the livestock is subject;

(3) A statement that the releasing party has a legal right to a hearing in court prior to any sale of the livestock to satisfy the lien;

(4) A statement by the releasing party that it is giving the lienholder permission to sell the livestock;

(5) A statement of the extent to which the releasing party gives up any interest it may have in the livestock or in the sale proceeds of the livestock; and,

(6) To the extent that the release is not given in full satisfaction of the lienholder's claim or claims against the releasing party, a statement by the releasing party that it is aware that the lienholder may still have a claim against it after the release has been executed.

3080.21. At any time after a lien has arisen, the lienholder may propose to retain any portion or all of the livestock in satisfaction of any portion or all of the claim against the owner or other person indebted to the lienholder for livestock services. The proposal shall be made in writing to the owner and written notice thereof shall be given to any person entitled to receive notice under subdivision (a) of Section 3080.17. If, within 21 days after the notice was sent, the lienholder receives objection in writing from a person entitled to receive notification, the lienholder must proceed to sell the livestock and account for the proceeds pursuant to this chapter. In the absence of such written objection, the lienholder may retain the livestock, or so much thereof as proposed, in satisfaction of all or a portion of the claim against the owner and other person indebted to the lienholder for livestock services, upon the owner's and such other person's execution of a release conforming to Section 3080.20.

3080.22. Any lien provided for in this chapter may be assigned by written instrument accompanied by delivery of possession of the livestock, subject to the lien, and the assignee may exercise the rights of a lienholder as provided in this chapter. Any lienholder assigning a lien as authorized herein shall at the time of assigning the lien give written notice of the assignment either by personal delivery or by registered or certified mail, to the legal owner and any other person entitled to receive notice under subdivision (a) of Section 3080.17, including the name and address of the person to whom the lien has been assigned.

3062. Every owner or person having in charge any stallion, jack, or bull, used for propagating purposes, has a lien for the agreed price of its service upon any mare or cow and upon the offspring of such service, unless some willfully false representation concerning the breeding or pedigree of such stallion, jack, or bull has been made or published by the owner or person in charge thereof, or by some other person, at the request or instigation of such owner or person in charge.

3063. Every claimant of a lien provided for in the preceding section must, within 90 days after the service on account of which the lien is claimed, record in the office of the county recorder of the county where the mare or cow subject thereto is kept, a verified claim containing a particular description of the mare or cow, the date and place of service, the name of the owner or reputed owner of such mare or cow, a description by name, or otherwise, of the stallion, jack, or bull performing the service, the name of the owner or person in charge thereof, and the amount of the lien claimed. Such claim, so recorded, is notice to subsequent purchasers and encumbrancers of such mare or cow and of the offspring of such service for one year after such recording.

3064. An action to enforce any lien created under Section 3062 may be brought in any county wherein any of the property subject thereto may be found, and the plaintiff is entitled to the remedies provided in Section 3065 upon complying with such section, which is hereby made applicable to the proceedings in such action.

3064.1. Every person who wilfully advertises any cattle, horse, sheep, swine, or other domestic animal for purposes of copulation or profit as having a pedigree other than the true pedigree of such animal shall forfeit all right by law to collect pay for the services of such animal.

9102. (a) In this division:

(1) "Accession" means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

(2) "Account," except as used in "account for," means a right to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv) for a secondary obligation incurred or to be incurred, (v) for energy provided or to be provided, (vi) for the use or hire of a vessel under a charter or other contract, (vii) arising out of the use of a credit or charge card or information contained on or for use with the card, or (viii) as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state. The term includes health care insurance receivables. The term does not include (i) rights to payment evidenced by chattel paper or an instrument, (ii) commercial tort claims, (iii) deposit accounts, (iv) investment property, (v) letter-of-credit rights or letters of credit, or (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

(3) "Account debtor" means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.

(4) "Accounting," except as used in "accounting for," means a record that is all of the following:

(A) Authenticated by a secured party.

(B) Indicating the aggregate unpaid secured obligations as of a date not more than 35 days earlier or 35 days later than the date of the record.

(C) Identifying the components of the obligations in reasonable detail.

(5) "Agricultural lien" means an interest in farm products that meets all of the following conditions:

(A) It secures payment or performance of an obligation for either of the following:

(i) Goods or services furnished in connection with a debtor's farming operation.

(ii) Rent on real property leased by a debtor in connection with its farming operation.

(B) It is created by statute in favor of a person that does either of the following:

(i) In the ordinary course of its business furnished goods or services to a debtor in connection with a debtor's farming operation.

(ii) Leased real property to a debtor in connection with the debtor's farming operation.

(C) Its effectiveness does not depend on the person's possession of the personal property.

(6) "As-extracted collateral" means either of the following:

(A) Oil, gas, or other minerals that are subject to a security interest that does both of the following:

(i) Is created by a debtor having an interest in the minerals before extraction.

(ii) Attaches to the minerals as extracted.

(B) Accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest

before extraction.

(7) "Authenticate" means to do either of the following:

(A) To sign.

(B) To execute or otherwise adopt a symbol, or encrypt or similarly process a record in whole or in part, with the present intent of the authenticating person to identify the person and adopt or accept a record.

(8) "Bank" means an organization that is engaged in the business of banking. The term includes savings banks, savings and loan associations, credit unions, and trust companies.

(9) "Cash proceeds" means proceeds that are money, checks, deposit accounts, or the like.

(10) "Certificate of title" means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.

(11) "Chattel paper" means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this paragraph, "monetary obligation" means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. The term does not include (i) charters or other contracts involving the use or hire of a vessel or (ii) records that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.

(12) "Collateral" means the property subject to a security interest or agricultural lien. The term includes all of the following:

(A) Proceeds to which a security interest attaches.

(B) Accounts, chattel paper, payment intangibles, and promissory notes that have been sold.

(C) Goods that are the subject of a consignment.

(13) "Commercial tort claim" means a claim arising in tort with respect to which either of the following conditions is satisfied:

(A) The claimant is an organization.

(B) The claimant is an individual and both of the following conditions are satisfied regarding the claim:

(i) It arose in the course of the claimant's business or profession.

(ii) It does not include damages arising out of personal injury to or the death of an individual.

(14) "Commodity account" means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

(15) "Commodity contract" means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is either of the following:

(A) Traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws.

(B) Traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a

commodity customer.

(16) "Commodity customer" means a person for which a commodity intermediary carries a commodity contract on its books.

(17) "Commodity intermediary" means a person that is either of the following:

(A) Is registered as a futures commission merchant under federal commodities law.

(B) In the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.

(18) "Communicate" means to do any of the following:

(A) To send a written or other tangible record.

(B) To transmit a record by any means agreed upon by the persons sending and receiving the record.

(C) In the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.

(19) "Consignee" means a merchant to which goods are delivered in a consignment.

(20) "Consignment" means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and all of the following conditions are satisfied:

(A) The merchant satisfies all of the following conditions:

(i) He or she deals in goods of that kind under a name other than the name of the person making delivery.

(ii) He or she is not an auctioneer.

(iii) He or she is not generally known by its creditors to be substantially engaged in selling the goods of others.

(B) With respect to each delivery, the aggregate value of the goods is one thousand dollars (\$1,000) or more at the time of delivery.

(C) The goods are not consumer goods immediately before delivery.

(D) The transaction does not create a security interest that secures an obligation.

(21) "Consignor" means a person that delivers goods to a consignee in a consignment.

(22) "Consumer debtor" means a debtor in a consumer transaction.

(23) "Consumer goods" means goods that are used or bought for use primarily for personal, family, or household purposes.

(24) "Consumer-goods transaction" means a consumer transaction in which both of the following conditions are satisfied:

(A) An individual incurs an obligation primarily for personal, family, or household purposes.

(B) A security interest in consumer goods secures the obligation.

(25) "Consumer obligor" means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family, or household purposes.

(26) "Consumer transaction" means a transaction in which (i) an individual incurs an obligation primarily for personal, family, or household purposes, (ii) a security interest secures the obligation, and (iii) the collateral is held or acquired primarily for personal, family, or household purposes. The term includes consumer-goods transactions.

(27) "Continuation statement" means an amendment of a financing statement which does both of the following:

(A) Identifies, by its file number, the initial financing statement to which it relates.

(B) Indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

(28) "Debtor" means any of the following:

(A) A person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor.

(B) A seller of accounts, chattel paper, payment intangibles, or promissory notes.

(C) A consignee.

(29) "Deposit account" means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument.

(30) "Document" means a document of title or a receipt of the type described in subdivision (b) of Section 7201.

(31) "Electronic chattel paper" means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.

(32) "Encumbrance" means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.

(33) "Equipment" means goods other than inventory, farm products, or consumer goods.

(34) "Farm products" means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are any of the following:

(A) Crops grown, growing, or to be grown, including both of the following:

(i) Crops produced on trees, vines, and bushes.

(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.

(35) "Farming operation" means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.

(36) "File number" means the number assigned to an initial financing statement pursuant to subdivision (a) of Section 9519.

(37) "Filing office" means an office designated in Section 9501 as the place to file a financing statement.

(38) "Filing-office rule" means a rule adopted pursuant to Section 9526.

(39) "Financing statement" means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

(40) "Fixture filing" means the filing of a financing statement covering goods that are or are to become fixtures and satisfying subdivisions (a) and (b) of Section 9502. The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.

(41) "Fixtures" means goods that have become so related to particular real property that an interest in them arises under real property law.

(42) "General intangible" means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software.

(43) [Reserved]

(44) "Goods" means all things that are movable when a security interest attaches. The term includes (i) fixtures, (ii) standing

timber that is to be cut and removed under a conveyance or contract for sale, (iii) the unborn young of animals, (iv) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes, and (v) manufactured homes. The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if (i) the program is associated with the goods in such a manner that it customarily is considered part of the goods, or (ii) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.

(45) "Governmental unit" means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a state, or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.

(46) "Health care insurance receivable" means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health care goods or services provided or to be provided.

(47) "Instrument" means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment. The term does not include (i) investment property, (ii) letters of credit, or (iii) writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

(48) "Inventory" means goods, other than farm products, which are any of the following:

(A) Leased by a person as lessor.

(B) Held by a person for sale or lease or to be furnished under a contract of service.

(C) Furnished by a person under a contract of service.

(D) Consist of raw materials, work in process, or materials used or consumed in a business.

(49) "Investment property" means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.

(50) "Jurisdiction of organization," with respect to a registered organization, means the jurisdiction under whose law the organization is organized.

(51) "Letter-of-credit right" means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

(52) (A) "Lien creditor" means any of the following:

(i) A creditor that has acquired a lien on the property involved by attachment, levy, or the like.

(ii) An assignee for benefit of creditors from the time of assignment.

(iii) A trustee in bankruptcy from the date of the filing of the

petition.

(iv) A receiver in equity from the time of appointment.

(B) "Lien creditor" does not include a creditor who by filing a notice with the Secretary of State has acquired only an attachment or judgment lien on personal property, or both.

(53) "Manufactured home" means a structure, transportable in one or more sections, which, in the traveling mode, is eight body-feet or more in width or 40 body-feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. The term includes any structure that meets all of the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States Secretary of Housing and Urban Development and complies with the standards established under Title 42 of the United States Code.

(54) "Manufactured home transaction" means a secured transaction that satisfies either of the following:

(A) It creates a purchase money security interest in a manufactured home, other than a manufactured home held as inventory.

(B) It is a secured transaction in which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.

(55) "Mortgage" means a consensual interest in real property, including fixtures, which secures payment or performance of an obligation.

(56) "New debtor" means a person that becomes bound as debtor under subdivision (d) of Section 9203 by a security agreement previously entered into by another person.

(57) "New value" means (i) money, (ii) money's worth in property, services, or new credit, or (iii) release by a transferee of an interest in property previously transferred to the transferee. The term does not include an obligation substituted for another obligation.

(58) "Noncash proceeds" means proceeds other than cash proceeds.

(59) "Obligor" means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral, (i) owes payment or other performance of the obligation, (ii) has provided property other than the collateral to secure payment or other performance of the obligation, or (iii) is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit.

(60) "Original debtor," except as used in subdivision (c) of Section 9310, means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under subdivision (d) of Section 9203.

(61) "Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation.

(62) "Person related to," with respect to an individual, means any of the following:

(A) The spouse of the individual.

(B) A brother, brother-in-law, sister, or sister-in-law of the individual.

(C) An ancestor or lineal descendant of the individual or the individual's spouse.

(D) Any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the

individual.

(63) "Person related to," with respect to an organization, means any of the following:

(A) A person directly or indirectly controlling, controlled by, or under common control with the organization.

(B) An officer or director of, or a person performing similar functions with respect to, the organization.

(C) An officer or director of, or a person performing similar functions with respect to, a person described in subparagraph (A).

(D) The spouse of an individual described in subparagraph (A), (B), or (C).

(E) An individual who is related by blood or marriage to an individual described in subparagraph (A), (B), (C), or (D) and shares the same home with the individual.

(64) "Proceeds," except as used in subdivision (b) of Section 9609, means any of the following property:

(A) Whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral.

(B) Whatever is collected on, or distributed on account of, collateral.

(C) Rights arising out of collateral.

(D) To the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral.

(E) To the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.

(65) "Promissory note" means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

(66) "Proposal" means a record authenticated by a secured party that includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to Sections 9620, 9621, and 9622.

(67) "Public finance transaction" means a secured transaction in connection with which all of the following conditions are satisfied:

(A) Debt securities are issued.

(B) All or a portion of the securities issued have an initial stated maturity of at least 20 years.

(C) The debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is a state or a governmental unit of a state.

(68) "Pursuant to commitment," with respect to an advance made or other value given by a secured party, means pursuant to the secured party's obligation, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from its obligation.

(69) "Record," except as used in "for record," "of record," "record or legal title," and "record owner," means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

(70) "Registered organization" means an organization organized solely under the law of a single state or the United States and as to which the state or the United States must maintain a public record showing the organization to have been organized.

(71) "Secondary obligor" means an obligor to the extent that either of the following conditions are satisfied:

- (A) The obligor's obligation is secondary.
- (B) The obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.
- (72) "Secured party" means any of the following:
- (A) A person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding.
- (B) A person that holds an agricultural lien.
- (C) A consignor.
- (D) A person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold.
- (E) A trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for.
- (F) A person that holds a security interest arising under Section 2401, 2505, 4210, or 5118, or under subdivision (3) of Section 2711 or subdivision (5) of Section 10508.
- (73) "Security agreement" means an agreement that creates or provides for a security interest.
- (74) "Send," in connection with a record or notification, means to do either of the following:
- (A) To deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances.
- (B) To cause the record or notification to be received within the time that it would have been received if properly sent under subparagraph (A).
- (75) "Software" means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.
- (76) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.
- (77) "Supporting obligation" means a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, document, general intangible, instrument, or investment property.
- (78) "Tangible chattel paper" means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.
- (79) "Termination statement" means an amendment of a financing statement that does both of the following:
- (A) Identifies, by its file number, the initial financing statement to which it relates.
- (B) Indicates either that it is a termination statement or that the identified financing statement is no longer effective.
- (80) "Transmitting utility" means a person primarily engaged in the business of any of the following:
- (A) Operating a railroad, subway, street railway, or trolley bus.
- (B) Transmitting communications electrically, electromagnetically, or by light.
- (C) Transmitting goods by pipeline or sewer.
- (D) Transmitting or producing and transmitting electricity, steam, gas, or water.
- (b) The following definitions in other divisions apply to this division:

"Applicant"	Section 5102.
"Beneficiary"	Section 5102.
"Broker"	Section 8102.
"Certificated security"	Section 8102.
"Check"	Section 3104.
"Clearing corporation"	Section 8102.
"Contract for sale"	Section 2106.
"Control"	Section 7106.
"Customer"	Section 4104.
"Entitlement holder"	Section 8102.
"Financial asset"	Section 8102.
"Holder in due course"	Section 3302.
"Issuer" (with respect to a letter of credit or letter-of-credit right)	Section 5102.
"Issuer" (with respect to a security)	Section 8201.
"Issuer" (with respect to documents of title)	Section 7102.
"Lease"	Section 10103.
"Lease agreement"	Section 10103.
"Lease contract"	Section 10103.
"Leasehold interest"	Section 10103.
"Lessee"	Section 10103.
"Lessee in ordinary course of business"	Section 10103.
"Lessor"	Section 10103.
"Lessor's residual interest"	Section 10103.
"Letter of credit"	Section 5102.
"Merchant"	Section 2104.
"Negotiable instrument"	Section 3104.
"Nominated person"	Section 5102.
"Note"	Section 3104.
"Proceeds of a letter of credit"	Section 5114.
"Prove"	Section 3103.
"Sale"	Section 2106.
"Securities account"	Section 8501.
"Securities intermediary"	Section 8102.
"Security"	Section 8102.
"Security certificate"	Section 8102.
"Security entitlement"	Section 8102.
"Uncertificated security"	Section 8102.

(c) Division 1 (commencing with Section 1101) contains general definitions and principles of construction and interpretation applicable throughout this division.

9601. (a) After default, a secured party has the rights provided in this chapter and, except as otherwise provided in Section 9602, those rights provided by agreement of the parties. A secured party may do both of the following:

(1) Reduce a claim to judgment, foreclose, or otherwise enforce the claim, security interest, or agricultural lien by any available judicial procedure.

(2) If the collateral is documents, proceed either as to the documents or as to the goods they cover.

(b) A secured party in possession of collateral or control of collateral under Section 7106, 9104, 9105, 9106, or 9107 has the rights and duties provided in Section 9207.

(c) The rights under subdivisions (a) and (b) are cumulative and may be exercised simultaneously.

(d) Except as otherwise provided in subdivision (g) and in Section 9605, after default, a debtor and an obligor have the rights provided in this chapter and by agreement of the parties.

(e) If a secured party has reduced its claim to judgment, the lien of any levy that may be made upon the collateral by virtue of an execution based upon the judgment relates back to the earliest of any of the following:

(1) The date of perfection of the security interest or agricultural lien in the collateral.

(2) The date of filing a financing statement covering the collateral.

(3) Any date specified in a statute under which the agricultural lien was created.

(f) A sale pursuant to an execution is a foreclosure of the security interest or agricultural lien by judicial procedure within the meaning of this section. A secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this division.

(g) Except as otherwise provided in subdivision (c) of Section 9607, this part imposes no duties upon a secured party that is a consignor or is a buyer of accounts, chattel paper, payment intangibles, or promissory notes.

Appendix “E”

WESTERN BLOODSTOCK

CONDITIONS OF SALE

FROM: WESTERN BLOODSTOCK, LTD. (THE AUCTIONEER)
TO: ALL SALE PARTICIPANTS AND ATTENDEES

READ THE FOLLOWING AND TAKE NOTICE BECAUSE THESE CONDITIONS OF SALE GOVERN ALL ACTIVITIES INVOLVING THE SALE. AUCTIONEER RESERVES THE RIGHT, IN ITS SOLE DISCRETION, TO SUSPEND ANY PERSON WHO VIOLATES THESE CONDITIONS IN ANY MANNER FROM FURTHER PARTICIPATION IN ANY SALE CONDUCTED BY AUCTIONEER. AUCTIONEER FURTHER RESERVES THE RIGHT, IN ITS SOLE DISCRETION, TO MAINTAIN A LIST OF PERSONS WHO VIOLATE THESE CONDITIONS IN ANY MANNER AND TO PUBLISH SUCH LIST IN FUTURE SALE CATALOGS.

No. 1 PRE-PURCHASE HORSE INSPECTION AND HEALTH INFORMATION (INCLUDING REPOSITORY)

A. Pre-Purchase Inspection: ALL PROSPECTIVE BIDDERS ARE HEREBY GIVEN NOTICE OF THEIR OPPORTUNITY TO INSPECT, AND ARE URGED TO PERSONALLY INSPECT, ANY HORSE THOROUGHLY PRIOR TO BIDDING. ANY PROSPECTIVE BIDDER MAY HAVE A VETERINARIAN MUTUALLY ACCEPTABLE TO OWNER PERFORM A FULL PRE-PURCHASE EXAMINATION OF A HORSE AT A REASONABLE TIME PRIOR TO THE SALE. PRIOR TO THE SALE, A PROSPECTIVE BIDDER MAY ALSO INSPECT ALL RADIOGRAPHS AND/OR HERDA TEST RESULTS PLACED IN THE REPOSITORY RELATED TO THE HORSE TO THE EXTENT SUCH RECORDS HAVE BEEN PROVIDED BY OWNER. BUYER SHALL BE ASSUMED TO HAVE KNOWLEDGE OF ANY FAULT, DEFECT OR CONDITION THAT A REASONABLE INSPECTION OF THE HORSE OR THE RADIOGRAPHS OR THE HERDA TEST RESULTS IN THE REPOSITORY SHOULD REVEAL. BUYER SHALL BE SOLELY RESPONSIBLE FOR THE SUFFICIENCY AND COMPLETENESS OF SUCH INSPECTION.

B. Buyer's Risk and Indemnity: BUYER'S FAILURE TO DO ANY OF THE FOREGOING PRIOR TO THE COMMENCEMENT OF BIDDING SHALL BE AT BUYER'S SOLE RISK. NEITHER OWNER NOR AUCTIONEER SHALL BE RESPONSIBLE FOR ANY FAULTS, CONDITIONS OR DEFECTS DISCOVERED AFTER THE SALE. BUYER SHALL INDEMNIFY AND HOLD HARMLESS

Auctioneer reserves the right, in its sole discretion, to accept a personal check upon written authorization or letter of credit from the bank on which the check is drawn. The Buyer's Acknowledgement of Purchase and Security Agreement is not transferable without the approval of Auctioneer. The copy of the Buyer's Acknowledgement of Purchase and Security Agreement retained by Buyer must be presented by Buyer at the time of settlement. A valid U.S. driver's license and/or other form(s) of positive U.S. identification for Buyer are required upon settlement; provided, however, Auctioneer reserves the right to accept settlement by Buyer without presentation of U.S. identification on terms satisfactory to Auctioneer, in its sole discretion.

- B. **Notice Regarding Failures to Pay:** Any person signing a check in the State of Texas is liable for the full amount of the check. Any party issuing a check returned as "insufficient funds" or "payment stopped" or "account closed", or issuing a check that for any other reason does not clear drawee's bank, is subject to being prosecuted to the full extent of the law and is further subject to all legal and equitable remedies, including interest, court costs and attorney fees.
- C. **Defaulters:** SHOULD BUYER FAIL TO COMPLY IN ANY RESPECT WITH THESE CONDITIONS, AUCTIONEER MAY, IN ITS ABSOLUTE AND SOLE DISCRETION, PURSUE ANY REMEDY AVAILABLE TO IT AGAINST THE DEFAULTING BUYER, INCLUDING BUT NOT LIMITED TO TAKING POSSESSION OF THE HORSE AND/OR RESELLING THE HORSE AT PUBLIC AUCTION OR BY PRIVATE SALE. In the event Auctioneer wishes to take possession of the horse upon Buyer's default, Buyer agrees to return the horse by delivering the horse to the location requested by Auctioneer at the time requested by Auctioneer. In any case, Buyer shall be liable for any deficiency after charging to Buyer's account all costs of recovering the horse, all costs of maintenance and resale of the horse, including but not limited to service charges, and all attorney fees and costs of litigation. Buyer shall also be subject to all other relief available at law or in equity to Auctioneer.
- D. **NCHA Rule 40:** Any member may be suspended and denied privileges of the Association, and any non-member, approved show, or official thereof may be denied privileges of the Association for the failure to pay when due any obligation owing to the Association (including "Cutting Horse Chatter") or for giving a worthless check for entry fees, stall fees, office charges, stock charges, premiums, or any other fees or charges or costs connected with the exhibition of cutting horses or the purchase of livestock or other property during a sale authorized or sanctioned by the Association or an affiliate of the Association; provided, however, that the member or non-member subject to suspension shall be give fifteen (15) days

written notice of the amount due and the intention of the Association to suspend or withhold privileges. Any suspension and denial of privileges under this rule shall terminate upon full payment of the obligation due the Association, and/or any affected show management. *NCHA Standing Rule 4.a.1., 2., and 3. will be enforced whenever suspension or denial of privileges are incurred under Rule 40 for giving a worthless check. Any past due amounts (60 days or more) owed to NCHA for any reason will be deducted from any premium checks won by debtor.*

- E. **Removal of Horses After Sale:** Unless other arrangements have been made with Auctioneer, Buyer shall remove all horses promptly from the sales barns after the sale. In addition, should Buyer fail to remove the horse(s) promptly, Auctioneer may remove the horse(s) from the sales premises at Buyer's risk and expense or, in the alternative, charge Buyer for stable space.
- F. **Security Interest:** Any Buyer who purchases a horse grants to Auctioneer a SECURITY INTEREST in all horses purchased and their proper certificates of registration and in any products and proceeds, in the amount of any outstanding sum owed to Auctioneer on Buyer's account.

No. 10 PASSAGE OF TITLE, RISK OF LOSS AND POSSESSION OF HORSE

- A. **Passage of Title and Risk of Loss:** All risk of loss, title to, interest in and possession of the horse(s) shall remain with Owner until the fall of the hammer. Notwithstanding the fact physical delivery of the horse to Buyer is yet to be made, title and ALL RISK OF LOSS, INJURY, SICKNESS, DISEASE AND ANY AND ALL OTHER RISKS PERTAINING TO THE HORSE PURCHASED SHALL PASS TO BUYER AUTOMATICALLY AND IMMEDIATELY AT THE FALL OF THE HAMMER, whereupon Buyer assumes all risk of loss and all responsibility, stabling, care and expenses for the horse. Upon the fall of the hammer, Buyer becomes obligated to INDEMNIFY AND HOLD HARMLESS Auctioneer, and/or any agent, employee or representative thereof, from all loss, cost and expense arising from (i) the illness, injury or death of the purchased horse, (ii) loss or damage to property caused by the purchased horse or (c) injury or death of persons caused by the purchased horse.
- B. **Physical Delivery of Horse:** Upon settlement by Buyer, the horse will be physically delivered to Buyer pursuant to a "stable release" provided by Auctioneer to Buyer or Buyer's representative. Upon settlement, Buyer will receive a copy of the Buyer's Acknowledgement of Purchase and Security Agreement, the current Coggins test, a copy of the registration certificate, a copy of any applicable breeder's certificate and/or a copy of any registration application available for a horse pending registration.

Appendix “F”

**Equine Statutory Liens - A look at the liens designed to protect
participants in the Kentucky Equine Industry**

By Donna A. Schneider

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Equine Statutory Liens

A look at the liens designed to protect participants in the Kentucky Equine Industry

By Donna A. Schneider

Under Kentucky law, there are three types of statutory liens designed to protect participants in the equine industry. These liens are the Agister's Lien, the Breeder's Lien and the Veterinarian's Lien. On July 1, 2001, Kentucky enacted the revised UCC Article 9. Statutory agricultural liens are now included within the scope of revised Article 9. This article will examine these liens and their treatment in the revised UCC Article 9.

Agister's Lien: KRS 376.400

Agistment is a form of bailment in which "a person, for consideration, takes animals for care and pasturing on his land, and the person who cares for the animals has an 'agister's lien' on the animals for that care."¹ Almost all states, including Kentucky, have statutory agister's liens. Under KRS 376.400, the owner or operator of a boarding stable is entitled to a one-year lien on a horse boarded at the stable if the boarding fees for the horse are not paid by the owner of the horse. Horses boarded on either a permanent or temporary basis are subject to the attachment of this lien if the fees are not paid. The lien is applicable to both full board and pasture board agreements. While the statute expressly refers to cattle,

horses are included in the statutory definition of cattle under KRS 446.010.

An agister's lien may be enforced as directed by KRS 376.410. The lienholder may file an affidavit for a seizure warrant in the district court of the county where the horse(s) are boarded. The affidavit must state the amount of the boarding fee arrearage and provide a description of the subject horse(s). The court will issue the warrant authorizing the local sheriff to levy upon and seize the subject horse(s) for the arrearage, plus interest and costs. The court may also issue the warrant to a county other than the county in which the horse(s) were boarded. The lien may also be enforced by filing suit for judgment.

Agister's liens are no longer purely possessory liens because the enforcement provisions of KRS 376.410 permit the lien to continue for one year after the horse(s) have been removed from the boarding facility. If the horse(s) are removed from the boarding facility with the lienholder's permission, the lien expires one year

after the date of removal.² If the horse(s) are removed, the lien is not enforceable against a bona fide purchaser without notice of the lien.³ An agister's lien has priority over a breeder's lien.⁴

Breeder's Lien: KRS 376.420

A stallion owner or keeper has a lien for stud fees for one year after the birth of a foal.⁵ This lien is enforceable by either suit for judgment or the warrant procedure described for agister's liens.⁶ As per the provisions of the agister's lien statute, a breeder's lien is inferior to an agister's lien.⁷ It is important to note that this statute creates a lien only in the event that a live foal is born.⁸ The stallion service contract controls in cases in which no live foal is born.⁹ Alternatively, the stallion owner or keeper may retain the stallion service certificate.¹⁰ Additionally, the stallion owner or keeper can utilize the agister's lien for boarding fees, if any, for the mare.¹¹ The breeder's lien is not dependent on possession for enforcement.

Veterinarian's Lien: KRS 376.470

Licensed veterinarians are entitled to a lien on any animal for which they

perform professional services when the services are performed by contract or written agreement with the owner or the owner's authorized agent.¹² The priority of

veterinarian's liens filed under this statute are determined by order of filing.¹³

In addition to the Agister's Lien, the Breeder's Lien and the Veterinarian's Lien, revised UCC Article 9 now includes Statutory Agricultural Liens within its scope.

Under the enforcement provisions of KRS 376.475, a veterinarian's lien will dissolve six months after the services are completed if the lien is not filed in the office of the county clerk for the county in which the animal is located.¹⁴ The claiming veterinarian or the vet's authorized agent must sign a sworn statement declaring the amount owed, a description of the animal sufficient to identify the animal, the owner's name and whether the services were provided pursuant to contract or written agreement of the owner or owner's agent.¹⁵ The claiming veterinarian must send a copy of the filing, by regular mail, to the owner at the owner's last known address within seven days of filing the statement.¹⁶ If the claiming veterinarian fails to mail a copy of the filing to the owner within this time frame, the lien will dissolve.¹⁷

Additionally, the claiming veterinarian is required to file suit to enforce the lien within twelve months from the date of filing the lien.¹⁸ If suit is not filed within this period of time, the lien will dissolve.¹⁹ Suits to enforce veterinarians' liens may be heard by trial commissioners and adhere to the procedural guidelines of KRS 376.110, KRS 376.120 and KRS 376.10.²⁰ If the claiming veterinarian complies with all filing and time requirements under KRS 376.475, the lien shall be valid against all of the owner's creditors and buyers, bona fide or otherwise, except as provided by the notice requirements of KRS 257.105 which permits a veterinarian to sell unclaimed animals left at the veterinarian's clinic.²¹

Under KRS 257.105, if an animal is left for veterinary care by the owner, or someone in lawful possession of the animal, and the animal has been in the veterinarian's care for more than ten days without being retrieved, the veterinarian may sell the animal for its reasonable value.²² Prior to selling the animal, the veteri-

narian must notify the owner or lawful possessor of the proposed sale by written notice sent by certified mail.²³ Notice must also be sent by certified mail to any record lienholders.²⁴ If the veterinarian is unable to determine the address of the owner or lawful possessor by reasonable diligence, then the proposed sale must be advertised in a newspaper, qualified pursuant to KRS 424.120, which circulates in the county in which the animal is located.²⁵ This advertisement must run at least ten days prior to the proposed sale and must state the date, place and time of the sale as well as the total amount owed in veterinary services.²⁶

If the animal is sold, the proceeds from the sale are first used to reimburse the veterinarian for the value of the veterinary services and board.²⁷ Any remaining proceeds are disbursed to the owner or lawful possessor or to any other entity legally entitled to receive any proceeds.²⁸ If the sale proceeds are not sufficient to cover the veterinarian's bill, the owner or lawful possessor remains liable for the unpaid balance.²⁹ If the owner or lawful possessor owes other debts to the veterinarian, the sale does not relieve those obligations.³⁰ Within five days after the sale, the veterinarian must file a record of the sale in the county clerk's office.³¹ The statute sets forth the specific details of the sale that must be included in the record.³²

Perfection And Priority Of Agricultural Liens

The scope of the recently enacted revised Article 9 was broadened to include nonpossessory statutory agricultural liens.³³ The definition of a secured party now includes the holder of an agricultural lien.³⁴ The definition of collateral now includes property subject to an agricultural lien.³⁵ Kentucky's version of Article 9 spe-

cifically classifies horses and equine interests as farm products irrespective of whether or not the debtor is engaged in farming operations and without regard to how the horse or equine interest is put to use.³⁶ The UCC defines agricultural liens to include liens created by statute for goods and services provided to the debtor in relation to the debtor's farming operations.³⁷ The goods or services must be provided in the ordinary course of the claimant's business.³⁸ Additionally, the lien must not be dependent upon the claimant's possession of the collateral.³⁹

The UCC distinguishes an agricultural lien from a possessory lien.⁴⁰ A possessory lien represents an interest other than an agricultural lien or a security interest.⁴¹ The possessory lien, like an agricultural lien, is statutory and secures payment for services or materials offered in the ordinary course of the lienholder's business.⁴² A possessory lien's effectiveness is dependent on possession of the goods for which the services or materials are provided.⁴³ Kentucky's agister's, breeder's and veterinarian's liens are not dependent on possession for enforcement. Each of these liens may be enforced after the collateral has left the possession of the lienholder.

The UCC classifies goods as farm products when the debtor engages in farming operations with respect to the specific goods.⁴⁴ Farming operations is defined as "raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation."⁴⁵ This new definition of farming operations was included for clarification.⁴⁶ In Kentucky, because horses are classified as farm products even if the debtor is not engaged in farming operations, it follows that the statutory agister's, breeder's and veterinarian's liens qualify as agricultural liens in equine

continued

Equine Statutory Liens *Continued*

cases even if the debtor is not engaged in farming operations.

The rules of priority for agricultural liens are the same as the priority rules for security interests.⁴⁷ The general rule is that the first to perfect or file wins.⁴⁸ Perfected agricultural liens have priority over unperfected agricultural liens and security interests.⁴⁹ The first agricultural interest or security interest to become effective or attach has priority over conflicting unperfected agricultural liens and security interests.⁵⁰ If the statute authorizing an agricultural lien provides that the agricultural lien is to take priority over conflicting security interests or agricultural liens, that agricultural lien will take priority if it is perfected.⁵¹ Under this exception, an agister's lien would take priority over a conflicting breeder's lien in the same horse if the agister's lien was properly perfected. Unperfected agricultural lienholders are subordinate to lien creditors.⁵²

KRS 355.9-310 sets forth the filing requirements for agricultural liens. As a general rule, for an agricultural lien to be perfected, a financing statement must be filed.⁵³ Fil-

ing is not required to perfect an agricultural lien when the collateral is in the lienholder's possession.⁵⁴ Thus an agister's lien is perfected as long as the stable owner or operator has possession of the horse(s).⁵⁵ A veterinarian's lien would also be perfected while the animal is in the veterinarian's possession.

An agricultural lien is considered perfected when it becomes effective and when the statutorily required steps for perfection under KRS 355.9-310 have been completed.⁵⁶ A lien may originally be perfected by one authorized method and later be perfected by another authorized method.⁵⁷ If this happens, the lien is deemed to be continuously perfected as long as there was no interim period of time when the lien was unperfected.⁵⁸ If a perfected lienholder assigns his lien, an additional filing is not required to continue the lien status against the debtor's creditors or transferees.⁵⁹

In the case of an agister's lien that is perfected while the stable owner or operator has possession of the horse(s), the lienholder should file record of the lien to continue perfection in the event the horses are removed from the facility. An agricultural lienholder is entitled to file an initial financing statement once the lien has become effective.⁶⁰ The lienholder does not need the debtor's permission to file a statement because the agister's lien is statutory.⁶¹ There

is a statutory penalty for falsely filing a financing statement under KRS 355.9-509.⁶² The debtor is

entitled to recover \$500 from the person wrongly filing a record.⁶³

Under KRS 355.9-501, agricultural liens are to be filed in the office of the Secretary of State.⁶⁴ In a choice of law situation, the local law of the jurisdiction in which the farm product is located governs priority, perfection or the effect of nonperfection.⁶⁵

Under KRS 355.320, a buyer in the ordinary course of business, but not a buyer of farm products from a person engaged in farming operations, takes free of a security interest created by the seller.⁶⁶ This rule applies even if the security interest is perfected and the buyer is aware of it.⁶⁷ Except as discussed below, a buyer of farm products from a person engaged in farming operations takes subject to liens. The "Keeneland Exception" makes an exception to this rule in the case of a buyer who purchases a registered breed racehorse or interest regulated by KRS Chapter 230 at a regular horse sales public auction.⁶⁸ In this case, a bona fide buyer takes the horse (a farm product) or interest free of any liens and security interests.⁶⁹ Additionally, the sales organization is not liable to a lienholder or secured party except to the extent permitted by the Federal Food Security Act.⁷⁰ The lien or security interest does attach to any identifiable proceeds as authorized by KRS 355.9-315 (1) (b).⁷¹

If a buyer, however, is buying a horse or interest other than a racehorse or interest at a recognized sale, the "Keeneland Exception" does not apply.⁷² This buyer does take free of unperfected agricultural liens or security interests if the buyer gives value and receives delivery without knowing of their existence and before they become perfected.⁷³ The same rule applies to a lessee.⁷⁴ A lienholder or secured party is required to pursue a judicial remedy against the debtor before proceeding against either the buyer or selling agent of an equine interest if the interest is sold prior to the debt being discharged.⁷⁵

Except under the conditions of KRS 355.320 relating to buyers in the ordinary course of business and buyers within the "Keeneland Exception," perfected agricultural liens and security interests continue in collateral past sale or other disposition un-

The "Keeneland Exception" makes an exception in the case of a buyer who purchases a registered breed racehorse or interest regulated by KRS Chapter 230 at a regular horse sales public auction.

less the secured party authorizes the sale to be free of the agricultural lien or security interest.⁷⁶ Under Kentucky's thoroughbred racing regulations, a lienholder must record its liens on horses entered in claiming races with either the track's racing secretary or the horseman's bookkeeper at least within thirty minutes of post time.⁷⁷ If a lienholder fails to make this recording, any perfected agricultural lien or security interest will be deemed waived.⁷⁸


CONCLUSION

There are only a few reported Kentucky cases involving agister's liens. There are no reported cases discussing breeder's liens or veterinarian's liens. In the most recent case involving an agister's lien, the Kentucky Supreme Court held that the agister's lien statute is not a "fee-shifting" statute which permits a court to assess one party's attorney's fees against the opposing party.⁷⁹ The statute makes no reference to attorney's fees. For attorney's fees to be recoverable in an agistment case, the underlying boarding contract must make provisions for payment of the fees by the owner in the event enforcement of an agister's lien becomes necessary.⁸⁰

The broadened scope of the recently enacted revised Article 9 includes agister's, breeder's and veterinarian's liens. The priority and perfection of these liens as against other conflicting security interests in the same collateral is now governed by Article 9 rules. The statutes creating these agricultural liens do not provide for the liens to extend beyond one year without some action taken to enforce the liens. Under Article 9, however, a filed financing statement is effective for five years from the date of filing.⁸¹ Once a perfected agricultural lienholder reduces its lien to judgment, the lien or any resulting

levy on the collateral dates back to the earliest in time of either perfection or filing of a financing statement on the collateral or a date specified by the statute creating the agricultural lien.⁸² Practitioners should note that veterinarian's liens will require double filing to comply with the lien statute and the Article 9 filing for perfection rule.

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Endnotes

1. BLACKS LAW DICTIONARY 66 (6TH ed. 1990).
2. KRS 376.410.
3. *Id.*
4. KRS 376.400.
5. KRS 376.420 (1).
6. KRS 376.420 (2).
7. KRS 376.400.
8. See "The Priority Race: Winner Takes the Horse," by R. David Lester and David E. Fleenor, 78 KY. L.J. 615, 652 (1990).
9. *Id.*
10. *Id.*
11. *Id.*
12. KRS 376.470 (1).
13. KRS 376.470 (2).
14. KRS 376.475 (1).
15. *Id.*
16. *Id.*
17. *Id.*
18. KRS 376.475 (3).
19. *Id.*
20. KRS 376.475 (3).
21. KRS 376.475 (3).
22. KRS 257.105 (1).
23. KRS 257.105 (2).
24. *Id.*
25. *Id.*
26. *Id.*
27. KRS 257.105 (3).
28. *Id.*
29. *Id.*
30. KRS 257.105 (4).
31. KRS 257.105 (5).
32. KRS 257.105 (5) (a-i).
33. Official Comment 4 (a) to UCC 9-101.
34. KRS 355.9-102 (bt) (2).
35. KRS 355.9-102 (l).
36. KRS 355.9-102 (ah) (5).
37. KRS 355.9-102 (e) (2).
38. KRS 355.9-102 (e) (2) (a).
39. KRS 355.9-102 (e) (3).
40. KRS 355.9-333.
41. KRS 355.9-333 (1).
42. KRS 355.9-333 (1) (a); KRS 355.9-333 (1) (b); Official Comment 2 to UCC 9-333.
43. KRS 355.9-333 (1) (c).
44. Official Comment 4 (a) to UCC 9-102.
45. KRS 355.9-102 (ai).
46. Official Comment 4 (a) to UCC 9-102.
47. KRS 355.9-322.
48. KRS 355.9-322 (1) (a).
49. KRS 355.9-322 (1) (b).
50. KRS 355.9-322 (1) (c).

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51. KRS 355.9-322 (7).
52. KRS 355.9-317 (1) (b) (1).
53. KRS 335.9-310 (1).
54. KRS 335.9-310 (2) (f).
55. KRS 355.9-313.
56. KRS 355.9-308 (2).
57. KRS 355.9-308 (3).
58. *Id.*
59. KRS 335.9-310 (3).
60. KRS 355.9-509 (1)(b).
61. Official Comment 5 to UCC 9-509.
62. KRS 355.9-625 (5) (c).
63. *Id.*
64. KRS 355.9-501 (1) (b).
65. KRS 355.9-302; Official Comment 2 to UCC 9-302.
66. KRS 355.9-320 (1)
67. *Id.*
68. KRS 355.9-320 (6)
69. *Id.*
70. *Id.* See 7 USC § 1631
71. *Id.*
72. KRS 355.9-320 (1).
73. KRS 355.9-317 (2).
74. KRS 355.9-317 (3).
75. KRS 413.242.
76. KRS 355.9-315 (1) (a).
77. 810 KAR 1:015 (15).
78. See "The Priority Race: Winner Takes the Horse," *supra* at 626-629, for discussion of claiming races.
79. *Knott v. Crown Colony Farm, Inc.*, 865 SW.2d 326, 329-30 (Ky. 1993).
80. *Id.* at 330.
81. KRS 355.9-515.
82. KRS 355.9-601 (5).

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