

News To Grow On



March 2005

Protecting Your Livestock & Grain

A recent South Dakota Supreme Court decision and a similar decision from the Nebraska Supreme Court a few years ago highlight the precaution that farmers and ranchers should take prior to allowing a third party to care for their livestock or to hold their grain.

In the South Dakota case, the third party that was caring for the animals borrowed money from a bank and pledged the cattle placed in the custody of the caretaker as part of the caretaker's loan. The owner of the livestock had not given public notice of the ownership interest of the cattle. The livestock owner had an agreement with the caretaker to care for the animals and have them sold, and the expenses would be paid and the profits would be split between the caretaker and the owner.

Neither the livestock owner nor the livestock owner's lender had filed an advisory UCC-1 giving notice that the cattle which the owner had placed with the caretaker were owned by the owner and not the caretaker. The South Dakota court held that the lien of the lender to the caretaker had priority over the claim of ownership of the owner, and the caretaker's lender had priority over the owner's lender. The South Dakota court also stated that in order to avoid this result, Uniform Commercial Code financing statements had to be filed on behalf of the owner of the livestock.



The Court relied on a similar decision that had been issued in 1995 regarding grain.

The Nebraska Supreme Court, in the *Maryott v. Oconto Cattle Co.* case, dealt with a situation in which a livestock owner delivered cattle to a feedlot and received checks for the cattle that were later dishonored. The Nebraska court held that title had passed once the cattle were delivered and the cattle owner was then an unsecured creditor of the feedlot. The lender for the feedlot had a prior lien on the cattle and the proceeds from the sale of the cattle.

In various situations there are substantial risks to livestock and grain owners in seeing that they are in the best position to get paid and have priority for payment ahead of feedlots and lenders to feedlots. The filing of Uniform Commercial Code financing statements, or obtaining a subordination agreement, or obtaining waivers, or a purchase money security interest, are options that are available to the livestock and grain owner to protect their interest.

Each situation may dictate a different approach. Livestock and grain owners should work with their banks and with counsel that is knowledgeable in agriculture ownership and financing issues to protect their interests in their livestock and grain. A little extra effort now could prevent a huge loss and expense in the future.

*Contributed by John M. Guthery,
Perry, Guthery, Haase & Gessford, P.C., L.L.O.*

A Message from the Ag Loan Department of Union Bank

We hope this second addition of our semi-annual newsletter, "News To Grow On" finds you happy, healthy, and anxiously anticipating the 2005 growing season. One of the best things about March is that Spring is just around the corner.

We have put together a great newsletter, including insightful contributions from John Guthery with Perry, Guthery, Haase, & Gessford, P.C., L.L.O. and Assistant Vice President Mike Zimmer from our Syracuse office.

It is our intent to offer a newsletter that is informational and adds value to your farming or ranching operation. If you have feedback, would like to see specific information included, or if we can be of service in any way, please call our office directly or visit our website.

We truly value our business relationship with you, and wish you a prosperous 2005!

Understanding the Benefits of Crop Insurance

What is the greatest risk to your operation? Is it drought? Maybe hail? Is it grain prices?

Crop Insurance can be a good risk management tool to use in your operation for some of these risks. Several common types of policies that are available include:

- MPCl - Multi-peril Crop Insurance
- CRC - Crop Revenue Coverage
- RA - Revenue Assurance

They all cover your operation against several common types of crop losses including drought, hail and insect damage.

MPCl provides you with a bushel guarantee at a set price, which is a good basic coverage.

CRC & RA provide you with revenue protection based on your yields and the price component is determined by the futures price for a set month of the commodity you are insuring. On these

policies you can get the higher of the Spring price or the Harvest price. Because of this feature, dryland farmers can feel more comfortable selling some of their crop before planting or during



the growing season which historically has provided better marketing prices for their grain. Irrigated producers can gain protection from hail and wind damage as well as the revenue protection and grain marketing advantages provided by these types of policies.

With crop input expenses on the rise, you probably will have more invested in your crops than ever before. Crop insurance is a sensible way to protect your sizable investment. Crop insurance also helps protect the hard-earned equity you have in your operation and helps minimize any potential operating losses that may come your way.

Each year our real goal in farming is ideal growing conditions, another record yield on each acre we farm and a good profit for our effort. We also need to consider and protect against the things that are the biggest risks to our farming operations. Crop insurance is a good tool to use to help control some of the most common risks to your farming operation.

March 15th is the deadline to apply for crop insurance or make changes to your existing crop insurance on your spring crops each year.

*Contributed by Mike Zimmer, Assistant Vice President,
Union Bank and Trust, Syracuse Branch*

