

Securing Your Ag Loans

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North Dakota Banker's Association
NDBA Ag Credit Conference



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Overview

- ▶ Perfecting Personal Property Collateral
- ▶ Perfecting Real Property Collateral
- ▶ Other Creditors
- ▶ Is Your Farm Customer Protected from Loss?
- ▶ Know Your Customer

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Perfecting Personal Property Collateral

- ▶ Crops
- ▶ Livestock (PMSI)
- ▶ Government Payments
- ▶ Elevator Receipts or Contracts
- ▶ Contracts for Deeds and Leases
- ▶ Membership Interests/Partnership Interests
- ▶ Unit Retains
- ▶ Investment Property
- ▶ Deposit Accounts
- ▶ Water Permits

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Perfecting Personal Property Collateral

- ▶ First thing first, is get it in writing
- ▶ Security Agreement
 - ▶ “writing” – can be electronic
 - ▶ Authenticated (i.e., signed) by Debtor (person granting collateral)
 - ▶ Description of Collateral
 - ▶ Description of obligation secured

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Art. 9 Perfection Chart

	Filing	Possession	Control	Automatic
Accounts	✓			✓ (if not a significant portion of accounts or a sale of lottery winnings)
Certified Securities	✓	✓	✓	✓ (temporary or if secured party is broker or securities intermediary)
Chattel Paper	✓	✓ (if tangible)	✓ (if electronic)	
Commercial Tort Claims	✓			
Consumer Goods	✓	✓		✓ (PMSI or security interest arising under Arts. 2 or 2A)
Certificates of Deposit		✓ (certificated)	✓ (uncertificated)	
Deposit Accounts			✓	✓ (if secured party is depository bank)
Documents of Title	✓	✓ (if tangible)	✓ (if electronic)	✓ (temporary)
Equipment	✓	✓		
Farm Products	✓	✓		

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Perfecting Personal Property Collateral

- ▶ Generally, file a financing statement (UCC-1)
- ▶ Alternatives are available/suggested, but financing statement always a good idea
- ▶ Belt and suspenders approach – filing is the backstop

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Perfecting Personal Property Collateral

- ▶ Financing Statement Filing Requirement 1 – Name of Debtor:
 - ▶ Individual Name – State issued ID
 - ▶ Corp. Name – Articles filed with Sec. of State

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Perfecting Personal Property Collateral

- ▶ Financing Statement Filing Requirement 2 –
Location of Debtor / where to file:
 - ▶ Individual – State of principal residence
 - ▶ Problem – multiple residences? Belt & suspenders file in both
 - ▶ Corp. / LLC – State where originally organized
 - ▶ Exception: fixtures / timber / as-extracted – real property recording needed

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Perfecting Personal Property Collateral

- ▶ Financing Statement Filing Requirement 3 –
Description of Collateral:
 - ▶ Should generally match your security agreement
 - ▶ Can be categorical or specific
 - ▶ “Now owned or hereafter acquired”
 - ▶ ND “Magic” Language

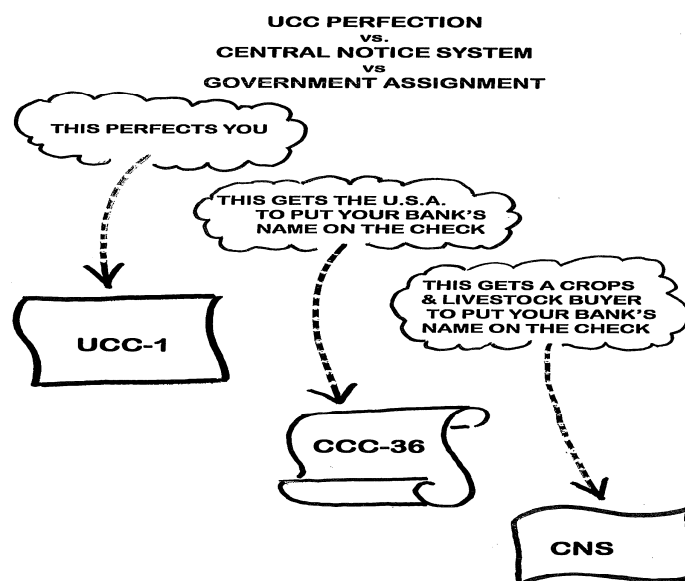
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Perfecting Personal Property Collateral

- ▶ Items that are not perfection, but helpful to have
 - ▶ Central Notice System filing – gets your name on the crop / cattle check
 - ▶ Need to file where crop / livestock will be sold
 - ▶ CCC-36 – Government Payment Assignment
 - ▶ Crop Insurance Assignment

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Perfecting Personal Property Collateral

- ▶ Perfection by “control”
- ▶ Essentially a third-party agreement that you have priority rights in collateral
- ▶ Priority or sole method:
 - ▶ Deposit Accounts – Sole
 - ▶ Investment Property (i.e. brokerage / commodity account) – Priority
 - ▶ Uncertificated Securities (e.g., ACSC Stock)

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Perfecting Personal Property Collateral

- ▶ Perfection by “possession”
- ▶ Documents of Title – get tangible bills of lading or warehouse receipts in your possession if you can (these are used less and less)

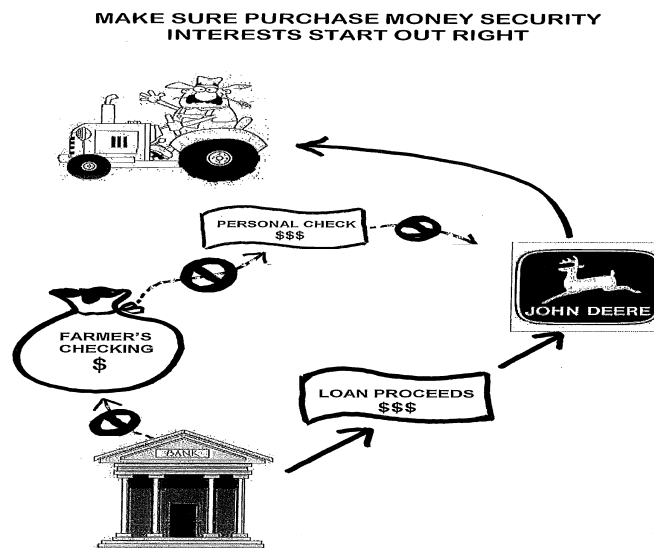
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Purchase Money Security Interests

- ▶ Know the timelines – get super priority
 - ▶ Perfection before or within 20 days of the debtor receiving possession of the collateral
- ▶ Only good for the advance that allowed the debtor to buy the collateral
 - ▶ No reimbursements!
- ▶ Special rules for livestock and inventory

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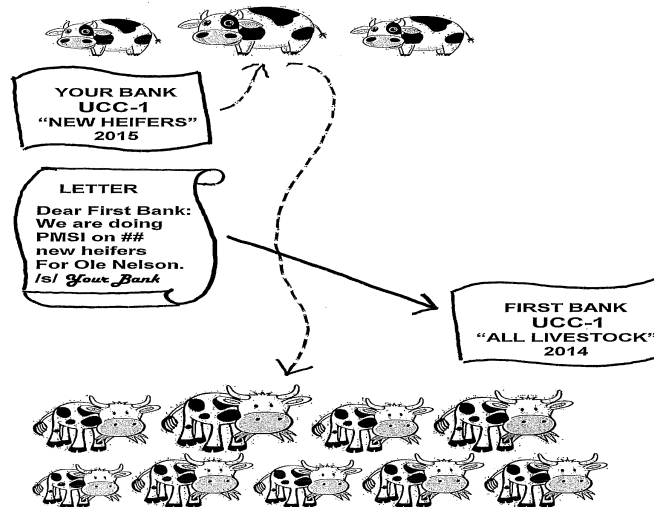
Presented by Tracy A. Kennedy of Zimney Foster P.C.

PURCHASE MONEY FINANCING LIVESTOCK

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Post-Perfection Issues

- ▶ Continuation of financing statement every five years
- ▶ Debtor changes Name – amendment within 4 months
- ▶ Debtor changes location – re-perfect within 4 months
- ▶ Ag Liens
- ▶ Judgment liens, i.e., execution
- ▶ IRS Tax Liens

Perfecting Real Property Collateral

- ▶ Bin Sites
- ▶ Title Insurance or title opinion
- ▶ Homestead waivers
- ▶ Landlords and fixtures
- ▶ Cross collateralization, future advances
- ▶ Collateral Real Estate Mortgages

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Perfecting Real Property Collateral

- ▶ Bin Sites
 - ▶ Is this a fixture or part of the real property?
 - ▶ Appropriate severance (owner and mortgagees) and lease agreements
 - ▶ Belt and Suspenders – treat as both if possible

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Perfecting Real Property Collateral

- ▶ Title Insurance / Title Opinion / O&E Report
 - ▶ What type of title work you have affects remedies
 - ▶ Title insurance – cost, but defense and indemnity
 - ▶ Title opinion – malpractice remedy possible
 - ▶ O&E Report – often very limited recourse
 - ▶ All have their places/uses – risk continuum

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Perfecting Real Property Collateral

- ▶ Homestead waivers
 - ▶ Applies to properties more than 40 acres
 - ▶ ND Homestead – living on land and contiguous up to 150k above liens and 160 acres
 - ▶ Ag mortgages should all be signed twice

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Perfecting Real Property Collateral

- ▶ Homestead waivers
 - ▶ Applies to properties more than 40 acres
 - ▶ ND Homestead – living on land and contiguous up to 150k above liens and 160 acres
 - ▶ Ag mortgages should all be signed twice
 - ▶ Note that title work providers do not always catch this
 - ▶ Pretty severe consequences if not included - 533 N.W.2d 683

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Perfecting Real Property Collateral

- ▶ Landlords and fixtures
 - ▶ Fixtures on leased land need special attention/care
 - ▶ Severance Agreement with landlord and mortgagees
 - ▶ Knowing tenants for leased land that is security
 - ▶ Landlord borrowers have their own credit risk with tenants

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Perfecting Real Property Collateral

- ▶ Cross collateralization, future advances
 - ▶ Regulatory concerns (consider mitigating language in the mortgages)
 - ▶ Reg Z
 - ▶ Flood insurance
 - ▶ Maximum obligation limits not necessary in ND
 - ▶ Intercreditor agreement if taking a junior mortgage

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Perfecting Real Property Collateral

- ▶ Collateral Real Estate Mortgages
 - ▶ Typically avoid this form of a mortgage – need to file an addendum and easily missed
 - ▶ Covered and same effect with future advance clause
 - ▶ Consider internal discussion if still using these forms of mortgages

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Other Creditors

- ▶ IRS- Liens and Levies
- ▶ FSA / SBA – Special Considerations of USA as a junior lender
- ▶ Judgment Liens and Levies
- ▶ Landlords
 - ▶ You might want a severance/type agreement for your crops
- ▶ Other PMSI Creditors
 - ▶ Implement Dealerships
 - ▶ Livestock
- ▶ Ag Liens and Trade Creditors
- ▶ Elevator Setoff
- ▶ Bankruptcy Trustee

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AG LIEN PRIORITIES

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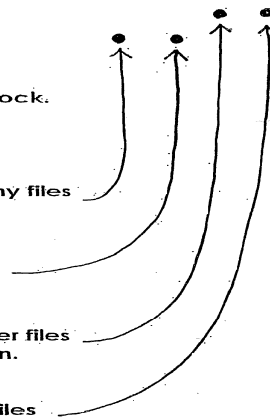
● **March 1** Bank files UCC-1 on crops or livestock.

June 1 Fertilizer Company files Ag Supplier lien.

July 1 FeedLot files Ag Supplier lien.

Oct. 1 Custom Combiner files Ag Processor lien.

Nov. 1 Slaughterhouse files Ag Processor lien.



Is Your Farm Customer Protected from Loss?

- ▶ Insurance
 - ▶ Farm, buildings, crop
- ▶ Equipment Trade-Ins and Value
- ▶ Sale of crops and evidence of warehouse receipts
 - ▶ Will your farm customer get paid for the crops and livestock?

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Know Your Customer

- ▶ Assignment of Life Insurance
- ▶ Marital Status and Child Support
- ▶ State and Federal Taxes
- ▶ Status with Trade Creditors
- ▶ Who has the Authority to Bind your Borrower

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