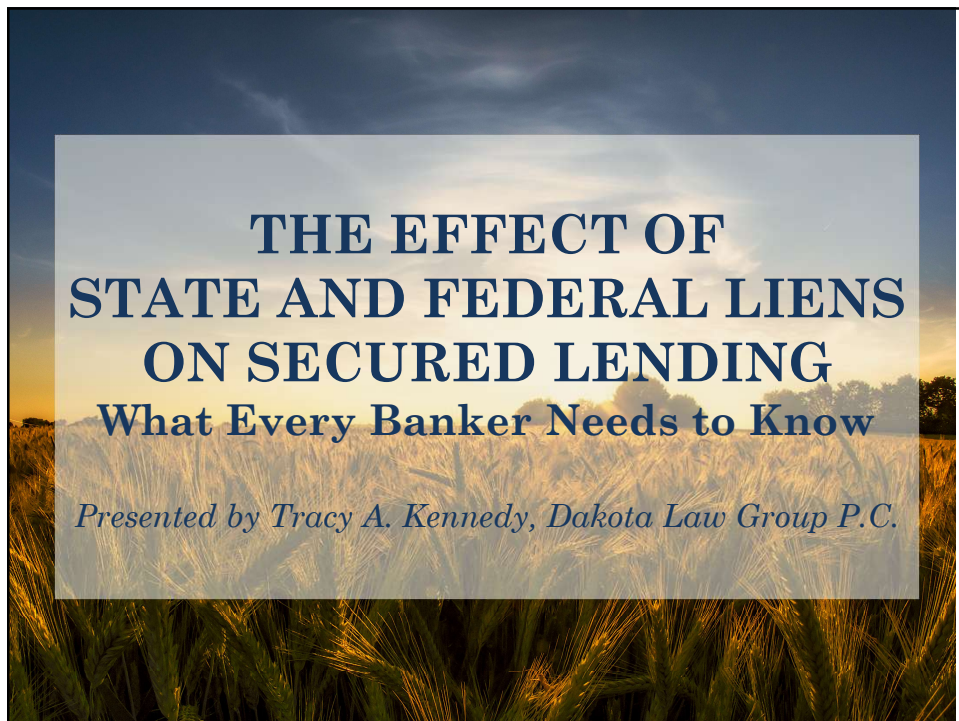


1



2

Agricultural Supplier's Lien

- Who Can File: Any person furnishing agricultural supplies (seed, feed, fertilizer, chemicals, petroleum/fuel).
- Protects unpaid suppliers who provided inputs directly to the producer.
- Filing Requirements:
 - Where: Central Notice System (Secretary of State).
 - When: Within 120 days (150 days for petroleum/fuel).
 - Must state: claimant's name/address, debtor's name/address, description of supplies, amount due, description of crops/products.
- Cite: NDCC §§ 35-31-01, 35-31-02.

3

Agricultural Processor's Lien

- Who Can File: Any person who processes agricultural products (threshing, combining, harvesting, drying, cleaning).
- Filing Requirements:
 - Where: Central Notice System (Secretary of State).
 - When: Within 90 days after completion of processing.
 - Must state: claimant's name/address, debtor's name/address, nature of processing, amount due, description of products.
- Cite: NDCC §§ 35-30-01, 35-30-02.

4

Agister's Lien

- Who Can File: Any person who feeds, herds, pastures, or cares for livestock at the owner's request.
- Filing Requirements:
 - Possessory lien: attaches while livestock in agister's possession.
 - To extend beyond possession: may file in Central Notice System.
 - Must state: claimant's name/address, debtor's name/address, description of animals, amount due.
- Cite: NDCC §§ 35-17-01, 35-17-04.

5

PMSI First Priority Liens

- A purchase money security interest (PMSI) gives special priority to lenders financing collateral acquisition.
- General rule: perfected PMSI in goods has priority over earlier-filed security interests in the same collateral.
- Non-inventory goods: timely perfection (generally within 20 days of debtor's receipt).
- Inventory/livestock:
 - Security interest must be perfected when the debtor receives possession;
 - Secured party must send authenticated notification to all other secured creditors of record;
 - Other secured creditors must receive the notice within a certain amount of time before the debtor receives possession; and
 - The notice must state that the secured party has or expects to acquire PMSI in inventory/livestock of the debtor and the notice must describe the inventory/livestock
- Cite: NDCC § 41-09-44 (UCC 9-324).

6

Repairman's Lien

- Lien authorized for reasonable charges for repairs/alterations of property
- Filing not required for perfection if in possession of the property; if the possession is relinquished, the person must file a statement in the central indexing system within a certain period of time
- Repairman must give notice to lienholders of record if amount is above certain thresholds
- Cite: N.D.C.C. Ch. 35-13.

7

Federal Tax Lien

- Arises upon assessment and demand; attaches to all taxpayer property.
- Priority vs. third parties depends on filing Notice of Federal Tax Lien (NFTL).
- Cite: 26 U.S.C. §§ 6321 and 6323; N.D.C.C. Ch. 35-29.

8

ND State Tax Lien

- Lien for unpaid state income/withholding taxes.
- Attaches to all property and rights to property of taxpayer.
- Perfection: file notice with county recorder (real) or SOS (personal).
- Priority: first in time, first in right, once filed.
 - Exception: future advances
- Cite: NDCC § 57-38-48, § 57-38-49 and § 57-38-51.

9

ND Child Support Lien

- Lien for past-due child support obligations.
- Attaches to all real and personal property upon filing.
- Perfection: file with county recorder (real) or SOS (personal).
- Priority: generally first in time, subject to statutory exceptions.
 - Exception: future advances
- Cite: NDCC ch. 35-34.

10

Real Estate Taxes & Special Assessments

- Real property tax lien is perpetual and paramount.
- Lien attaches Jan. 1 following levy year.
- Special assessments become liens upon approval of assessment list.
- Cite: NDCC § 57-02-40; § 57-02-41; § 40-24-01; § 40-24-03.

11

Setoff

- A security interest in a deposit account is different than the right of set-off.
- If you have a loan to an ag borrower, you should ALWAYS have deposit accounts listed as your collateral in your Security Agreement.
- Generally, a bank with which a deposit account is maintained may exercise its right of set-off against a secured party holding a security interest in the deposit account.
- However, *if the secured party holding a security interest in the deposit account has perfected by control (i.e., has a control agreement), the maintaining bank cannot exercise its right of set-off.* N.D.C.C. § 41-09-60.
- If your borrower files for bankruptcy you will not be able to exercise a right of setoff but you might still be able to freeze the account and make a motion to take the funds in the account because they will actually be your collateral.

12

Judgment Lien on Personal Property

- Judgment lien does not automatically attach to personal property.
- Lien arises only through levy of execution.
- Sheriff must endorse writ with time and property levied. (NDCC § 28-21-04)
- Levy must be made within 60 days; return within 90 days if unsold. (NDCC § 28-21-07)
- Priority: first levy has priority over later liens or creditors.
- Secured creditors perfected before levy maintain priority, including after-acquired collateral. (NDCC §§ 41-09-37, 41-09-28, 41-09-14)
- To encumber household goods (or other property exempt from execution) via a security agreement (that is *not* a PMSI), both spouses must sign; if only one spouse signs, it is void. N.D.C.C. § 35-01-04.

13

Judgment Lien on Real Property

- Judgment becomes lien on real property in county upon docketing.
- Attaches to all non-exempt real property, including after-acquired.
- Duration: 20 years unless renewed. (Updated 2025 statutory change)
- Cite: N.D.C.C. §§ 28-20-13, 28-20-13.1, and 35-01-05.2.

14

Ch. 12 Bankruptcy – Cash Collateral Basics

- Cash Collateral: includes cash, crop proceeds, gov't payments, etc. (11 U.S.C. § 363(a)).
- Debtor cannot use without consent or court order (11 U.S.C. § 363(c)(2)).
- Adequate Protection: creditors protected (often via replacement liens). (11 U.S.C. § 361).

15

Ch. 12 Bankruptcy – Motion to Sell Crop

- Debtor may seek approval to sell existing crops post-petition.
- Court approval is required unless secured creditors consent.
- Adequate protection usually provided through replacement liens or periodic cash payments.
- Cash collateral orders often include operational budgets.

16

Ch. 12 Bankruptcy – Replacement Liens

- Replacement liens: creditors granted liens on post-petition crops, livestock, or other proceeds.
- Purpose: to replace value of pre-petition collateral consumed by debtor.
- Ensures secured creditors maintain position despite debtor's use of cash collateral.
- Banker Tip: Expect negotiations early; review terms of replacement liens carefully.