

Perfecting Security Interests In Government Payments



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Increased Government Assistance To Ag Borrowers Due To Recent Events

- COVID-19
- August 10, 2020 derecho storm
- Trade war/tariff consequences
- 2019 floods

Lenders must be aware of additional requirements for perfecting security interests in these payments



Government Programs/Payments To Ag Borrowers Include:

- Federal Crop Insurance Act (“FCIA”)
- Agriculture Risk Coverage (“ARC”) or Price Loss Coverage (“PLC”)
- Conservation-related payments
- Coronavirus Food Assistance Programs (“CFAP 1 & 2”)
- Prevented Planting Payments



Lender Issues For Government Payments

- Best practices for describing lender's interest in the Ag Borrower's entitlement to the payments
- Whether payments are "proceeds" under the UCC
- Specific issues for perfecting a security interest in the payments depending on the program



How To Describe Government Payments As Collateral In A Security Agreement?

Ag Borrower Entitlement To Payment Could Be:

- An account
- A payment intangible
- A general intangible
- Another type of collateral
- Proceeds of collateral

A good security agreement will cover the waterfront



Collateral Description Example Language

The word “Collateral” as used In this Agreement means the following described property (capitalized terms have the meaning provided in the Uniform Commercial Code), whether now owned or hereafter acquired, whether now existing or hereafter arising, wherever located:

All Equipment, Farm Products, General Intangibles, Accounts, Inventory, Investment Property, Fixtures, Chattel Paper, Instruments, Deposit Accounts, Warehouse Receipts, Letters of Credit, Documents of Title, Bills of Lading, Intellectual Property rights, and Documents; together with all substitutions, replacements, proceeds or products of the foregoing.

...

All contract rights, chattel paper, documents, accounts, general intangibles, whether now owned or hereafter acquired by Grantor, including, but not limited to, payments in cash or in kind (under any current or future estate or federal government programs), including but not limited to, governmental agricultural diversion programs, governmental agricultural systems programs, and all proceeds of the foregoing and all general intangibles.



Best Practices For Describing Lender's Interest – Include An “All Debts And Future Advance” Or “Dragnet” Clause:

- Some older forms only reference specific notes—better and easier if security agreements have language securing across all notes
- Clause should clearly and specifically disavow the need for relatedness between debts/notes

All Debts And Future Advance Example Language

In addition, Borrower and Grantor hereby grant a security interest in the Collateral to also secure payment and performance of the following (the "Additional Indebtedness"): each and every other note, debt liability and obligation of every type and description which the Grantor or Borrower may now, or at any time, owe to the Lender, whether pursuant to a written agreement, or otherwise, whether now existing or hereafter arising, whether direct or Indirect, contingent or absolute, primary or secondary, liquidated or unliquidated, independent, joint, several, or joint and several, including, but not limited to, all future advances, and amounts advanced and expenses and attorneys' fees incurred.

...

FUTURE ADVANCES. In addition to the Note, this Agreement secures all future advances made by Lender to Grantor regardless of whether the advances are made a) pursuant to a commitment or b) for the same purposes.



Best Practices For Describing Lender's Interest – Issues With Contract And Rent Receivables:

Farmer leases land to third party

- Lender must describe interest in rent payments. Account receivable? General intangible?
- Best practice: include both general intangibles and accounts receivable
- Consider whether to address other lease issues in advance, e.g. right to receiver, termination of lease



When Are Government Payments “Proceeds” Under The UCC? No Clear Answer.

- Iowa’s state courts have not addressed this issue
- Bankruptcy Courts for Northern and Southern Districts have historically ruled that government program payments were not farm product proceeds—BUT these cases are ~30 years old and the definition of “proceeds” has since expanded

Avoid the issue by better describing the collateral



Perfecting A Security Interest In Government Payments

- Stay aware of any borrower participation in these benefit programs—your lending agreement should require the borrower to notify you of their participation and cooperate in signing documents or taking other steps to perfect a security interest
- Always file a financing statement describing the collateral
- Be aware of additional considerations or requirements depending on the government program and ready to take additional steps (e.g. obtain and file Form CCC-36)



Perfecting A Security Interest - Considerations For Crop Insurance

- Crop insurance is overseen and regulated by the Risk Management Agency (“RMA”)
- To obtain payments directly from insurance provider, lender must have Ag Borrower execute an “assignment of indemnity” – the RMA has a standard form, but insurance providers typically use and require their own forms
- Requirement applies to standard crop insurance, area risk protection payments, and prevented planting payments
- If no assignment of indemnity, lender may only attempt to recover payments *after* they have been made to Ag Borrower



Perfecting A Security Interest - Considerations For Federal Cash Payments

- Ag Entitlement Payments typically made by Farm Services Agency (“FSA”), Community Credit Corporation (“CCC”), or National Resources Conservation Service (“NRCS”)
- To secure right to payments, lender must obtain an executed Form CCC-36, Assignment of Payment, and/or CCC-251 & CCC-252, Notice of Assignment and Instrument of Assignment, and file in the appropriate FSA office
- If the Ag Borrower participates in a new federal entitlement program, lender must obtain and file new assignment forms to secure its rights to those payments



CCC-36
03-05-20

U.S. DEPARTMENT OF AGRICULTURE
Commodity Credit Corporation

1. Check Applicable Agency
(only one)

FSA

NRCS

ASSIGNMENT OF PAYMENT

PART A - GENERAL INFORMATION

2. Assignor's Name and Address (Including Zip Code)

3. Assignee's Name and Address (Including Zip Code)

4. Assignor's Tax Identification Number (9 Digit Number):

5. Assignee's Tax Identification Number (9 Digit Number):

PART B - APPLICABLE PROGRAM(S)

6. Program	7. Assigned Amount for Each Applicable Year					8. State, County, and Reference Number, If Applicable
	YEAR	YEAR	YEAR	YEAR	YEAR	
Agricultural Risk Coverage (ARC)	AMOUNT	AMOUNT	AMOUNT	AMOUNT	AMOUNT	
Price Loss Coverage (PLC)	AMOUNT	AMOUNT	AMOUNT	AMOUNT	AMOUNT	
Conservation Reserve Program Annual Rental (CRP)	AMOUNT	AMOUNT	AMOUNT	AMOUNT	AMOUNT	
	AMOUNT	AMOUNT	AMOUNT	AMOUNT	AMOUNT	
Emergency Assistance Livestock Honey Bee and Farm Raised Fish Program (ELAP)	AMOUNT	AMOUNT	AMOUNT	AMOUNT	AMOUNT	



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Perfecting A Security Interest Considerations For State Ag Programs

- Examples include the Iowa Beginning Farmer Debt Relief Fund, the Iowa Livestock Producer Relief Fund, the Iowa Biofuels Relief Program, and the Iowa Disposal Assistance Program
- Iowa Code § 554.9406 does away with extra restrictions on perfecting security interests for these state benefits, so lenders simply need to file a financing statement



Other Issues For Ag Lending

SPMB Presentations Have The Information You Need

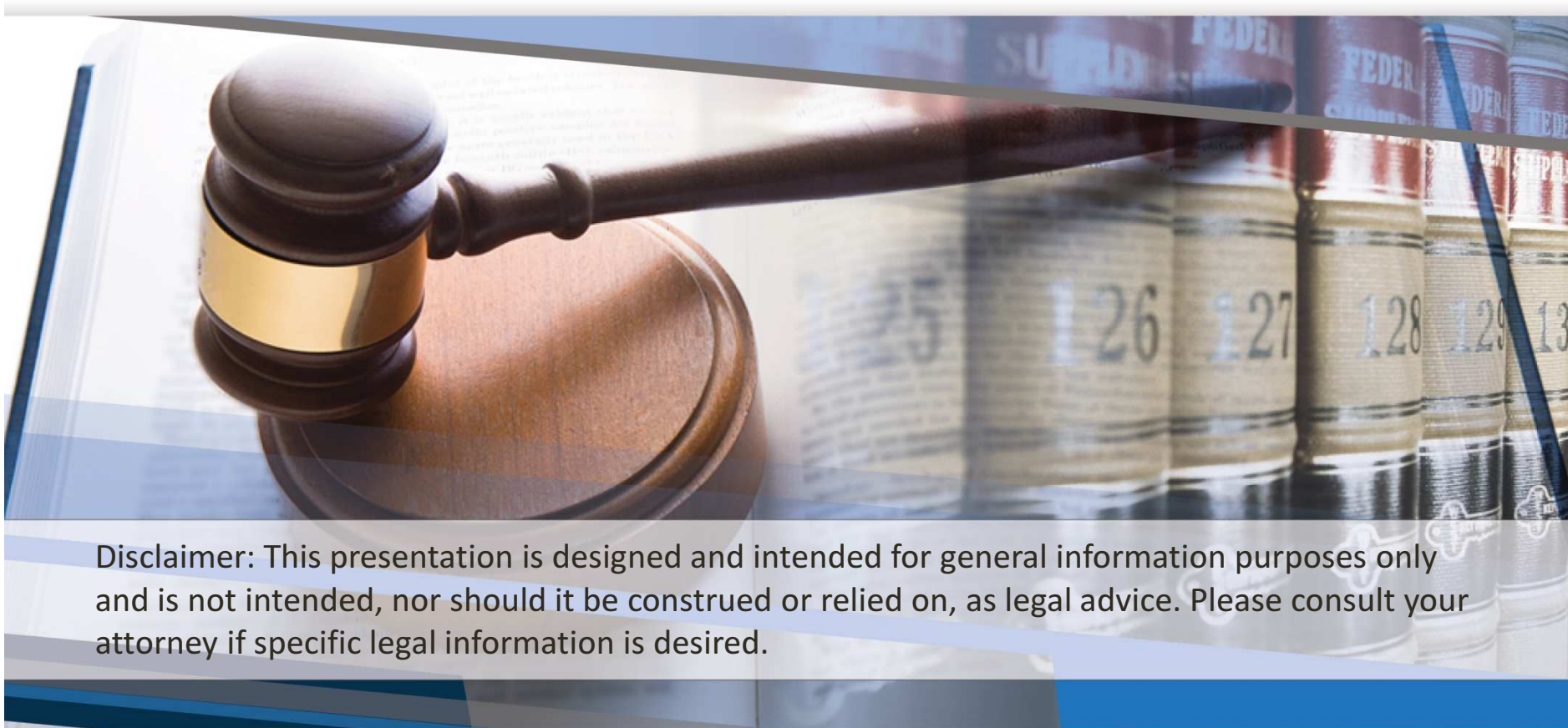
- Special liens (Landlord, Ag Supply Dealer, Veterinarian, etc.) - 2018 presentation on “Minimizing Risks of Problematic Ag Loans”
- COVID-19 related collection issues - 2020 presentation on “Commercial, Ag and Business Collections in Turbulent Times”
- Ag Mortgage Foreclosures – 2018 presentation on “Iowa Agriculture Mortgage Foreclosures and Related Issues”

Recordings of these presentations and more available at <https://www.spmblaw.com/our-firm/presentation-library>



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