

# CROSBY GUENZEL LLP

ATTORNEYS AT LAW

THEODORE L. KESSNER  
WILLIAM D. KUESTER  
STEVEN G. SEGLIN  
ROCKY C. WEBER  
DAVID A. JARECKE  
MARY HEWITT JONES  
WILLIAM R. KUTILEK  
JUSTIN D. LAVENE

FEDERAL TRUST BUILDING  
134 SO. 13<sup>TH</sup> STREET, SUITE 400  
LINCOLN, NEBRASKA 68508  
TELEPHONE: (402) 434-7300  
FACSIMILE: (402) 434-7303

ROBERT C. GUENZEL (RETIRED)

ROBERT B. CROSBY (1911-2000)  
THOMAS R. PANSING (1917-1973)  
DONN E. DAVIS (1929-1998)

WRITER'S DIRECT DIAL NO:  
(402) 434-7324

WRITER'S E-MAIL ADDRESS:  
sgs@crosbylawfirm.com

September 26, 2002

Jay Holmquist, General Manager  
Nebraska Rural Electric Association  
800 South 13<sup>th</sup> Street  
P.O. Box 82048  
Lincoln, NE 68501

Re: Liens for Electricity

Dear Jay:

You have asked that we review the Nebraska statutes and advise whether suppliers of electricity are authorized to file liens upon real estate for unpaid electric bills. If there are any such statutes, you ask that we summarize the process.

We have found two statutes. One, *Neb. Rev. Stat.* §§ 52-1201 to 52-1205, provides for Seed or Electrical Power and Energy Liens. The other, *Neb. Rev. Stat.* §§ 52-1401 to 52-1411, provides for Agricultural Production Liens.

## SEED OR ELECTRIC POWER AND ENERGY LIENS

*Neb. Rev. Stat.* § 52-1201 provides that “[a]ny person, including any public power districts, cooperative, . . . who contracts or agrees to furnish . . . electric power or energy, or both, used in the production of crops shall have a lien upon all crops produced . . .”

A lien created under section 52-1201 is perfected in the same manner as a lien under Article 9 of the Uniform Commercial Code (UCC). The lien must be perfected within 60 days after the last date on which the meter was read with respect to the electrical power or energy furnished. *Neb. Rev. Stat.* § 52-1202.

Any financing statement filed to perfect this lien shall contain or have attached thereto:

- (a) the name and address and the social security number or federal tax identification number of the person claiming the lien,
- (b) the name and address and the social security number or federal tax identification number, if known, of the person to whom the electrical power or energy was furnished,
- (c) the contract price or reasonable value of the electrical power or energy,

- (d) the type and amount of the electrical power and energy and the period during which such power or energy was furnished.

At the time that the lien is filed, the lienholder shall send a copy to the person to whom the electrical power or energy was furnished. *Neb. Rev. Stat.* § 52-1202.

A lien created under section 52-1201 attaches on the date of filing and time thereof if shown. The lien is treated as an agricultural lien under Article 9 of the UCC, and may be enforced under Article 9 of the UCC as a secured transaction. *Neb. Rev. Stat.* § 52-1203.

Sections 52-1204 and 52-1205 provide for lien priority and satisfaction and termination of the lien.

The standard UCC financing statement is used for filing the lien and there is a form approved by the Secretary of State that is to be attached to the financing statement, which are attached as Exhibit "A."

#### AGRICULTURAL PRODUCTION INPUT LIENS

*Neb. Rev. Stat.* §§ 52-1401 to 52-1411 authorizes a supplier of electricity which is used in the production of crops and livestock to acquire a lien called an "agricultural production input" lien by notifying a lender of a producer of such lien (lien-notification statement). *Neb. Rev. Stat.* § 52-1402. Agricultural production input is a defined term which includes electricity used in preparing the land for planting, cultivation, growing, producing, harvesting, drying, and storing crops or crop products or feeding, producing, or delivering livestock. *Neb. Rev. Stat.* § 52-1401(10).

The lien-notification statement, pursuant to *Neb. Rev. Stat.* § 52-1402, must be sent to the lender by certified mail or another verifiable method in an enveloped marked **IMPORTANT**. The statement form is required to be approved by the Secretary of State and is required to disclose:

- (a) The name and business address of any lender;
- (b) The name, address, and signature of the supplier claiming the lien;
- (c) A description and date or anticipated date or dates of the transaction or transactions and the retail cost or anticipated costs of the agricultural production input;
- (d) The name, residential address, and signature of the person to whom the agricultural production input was furnished or is to be furnished;
- (e) The name and residential address of the owner and a description of the real estate sufficient to identify the same where the crops to which the lien attaches are growing or, if livestock, the name and residential address of the owner of the livestock, the location where the livestock will be raised, and a description of the livestock;
- (f) A statement that the products and proceeds of the crops or livestock are covered by the agricultural input lien;
- (g) The social security number or federal tax identification number of the person to whom the agricultural production input was furnished, if known; and
- (h) The social security number or federal tax identification number of the supplier claiming the lien.

Within 15 calendar days after receiving a lien-notification statement, the lender, pursuant to *Neb. Rev. Stat.* § 52-1403, is required to respond to the supplier with either:

- (1) A letter of commitment for part or all of the amount of the lien claimed in the lien notification statement;
- (2) If only a partial commitment is made, the a copy of the partial commitment is required to be sent to the person to whom the agricultural production input was furnished or is to be furnished;
- (3) A written refusal to issue a letter of commitment, and a copy of such refusal shall be sent to the person to whom the agricultural production input was furnished or is to be furnished.

If the lender responds with a letter of commitment, the supplier may not obtain a lien for the amount stated in the letter of commitment. If the lender responds with a written refusal to issue a letter of commitment, the rights of the lender and the supplier are not affected by sections 52-1401 to 52-1411, and any prior perfected lien of the lender under the UCC shall retain its established priority. *Neb. Rev. Stat.* § 52-1404.

If the lender fails to respond to the supplier within 15 calendar days after receiving the lien-notification statement, the supplier of electricity, pursuant to *Neb. Rev. Stat.* § 52-1405, has a lien which has priority over any security interest of the lender in the specified crops or their proceeds for the lesser of:

- (a) The amount stated in the lien-notification statement; or
- (b) The unpaid retail cost of the agricultural production input identified in the lien-notification statement.

The agricultural production lien attaches to:

- (a) The existing crops upon the land where a furnished agricultural was applied or, if crops are not planted, the next production crop where a furnished agricultural chemical was applied within 16 months following the last date on which the agricultural chemical was applied;
- (b) The crops produced from furnished seed;
- (c) The crops produced, harvested, or processed using a furnished petroleum product or furnished electricity. If the crops are grown on leased land and the lease provides for payment in crops, the lien does not attach to the lessor's portion of the crops. The lien continues in crop products and proceeds, except the lien does not continue in grain after a cash sale;
- (d) All livestock consuming the feed and continues in livestock products and proceeds.

An agricultural production input lien attaches when the agricultural production input is furnished by the supplier to the purchaser. *Id.*

An agricultural production input lien is perfect as provided in article 9 of the UCC. Any financing statement filed to perfect such lien shall contain or have attached thereto the information required in subsection (2) of section 52-1402 and shall be filed within three months after the last date that the agricultural production input was furnished. Perfection of the lien occurs as of the filing date. An agricultural production input lien that is not perfected has the priority of an unperfected security interest under section 9-322 of the UCC. Enforcement of the lien is governed by article 9 of the UCC.

*Neb. Rev. Stat. § 52-1407.*

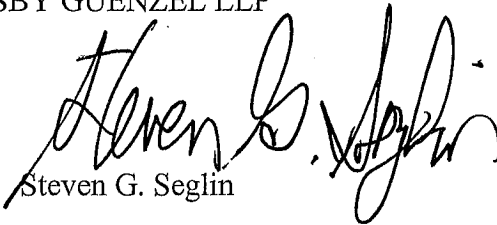
Lien enforcement procedures and lien satisfaction and termination procedures are set forth in sections 52-1408 and 52-1409.

The Form approved by the Secretary of State is attached as Exhibit "B."

Very truly yours,

CROSBY GUENZEL LLP

By

  
Steven G. Seglin

SGS:rrk