

# CHAPTER 570A CROP AND LIVESTOCK LIEN LAW: A PANACEA OR PANDORA'S BOX

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## I. INTRODUCTION

Chapter 570A of the Iowa Code provides a procedure whereby in certain circumstances an agricultural supply dealer can obtain an irrevocable and unconditional letter of credit from a financial institution in order to ensure payment of a debt of a farmer creditor.<sup>1</sup> The chapter also provides for the creation of liens against crops and livestock to secure payment for agricultural chemicals, seed, petroleum products, and feed used in the production of growing crops and livestock, as well as providing for the perfection,<sup>2</sup> enforcement,<sup>3</sup> assignment<sup>4</sup> and satisfaction of these liens.<sup>5</sup> The liens created by chapter 570A may be equal or superior to the Uniform Commercial Code (U.C.C.) Article 9 security interests of a financial institution.<sup>6</sup> This discussion of chapter 570A is intended and designed to provide accurate and authoritative material to the extent possible. Since the chapter has not been interpreted and construed by the courts, however, this article will analyze the new law in the context of established law and draw reasonable inferences as to possible interpretations.

### A. Article 9 Interest in Crops Available Prior to Chapter 570A

Generally, a holder of a prior security interest in crops usually prevails against a holder of a subsequent security interest in crops to secure the cost of crop production.<sup>7</sup> There is, however, a possibility of priority pursuant to

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1. 1984 IOWA LEGIS. SERV. No. 2, 114 (West) [hereinafter cited as IOWA CODE § 570A].

2. IOWA CODE § 570A.4, *supra* note 1, at 117.

3. *Id.* § 570A.6-.8, *supra* note 1, at 119-20.

4. *Id.* § 570A.9, *supra* note 1, at 120.

5. *Id.* § 570A.10, *supra* note 1, at 120.

6. See *id.* § 570A.5, *supra* note 1, at 119.

7. See generally IOWA CODE § 554.9312 (1983). It is not the purpose of this article to provide an exhaustive and definitive analysis of possible Uniform Commercial Code (UCC) article 9 interests in crops or livestock and their priorities, but rather to provide a brief statement of law existing at the time of passage of chapter 570A. It should be noted that the remedies available under chapter 570A in no way prejudice the present right of creditors to pursue the remedies of U.C.C. article 9 as an alternative. See IOWA CODE § 570A.11, *supra* note 1, at 120. For additional discussion of the remedies available under U.C.C. article 9, see Clark, *Agricultural Transaction: Crop Financing*, 11 U.C.C. L.J. 15 (1978); Clark, *Agricultural Transaction: Livestock Financing*, 11 U.C.C. L.J. 106 (1978); Meyer, *Crops as Collateral Under Article 9*, 15 U.C.C. L.J. 3 (1982).

chapter 554 that provides:

A perfected security interest in crops for new value given to enable the debtor to produce the crops during the production season and given not more than three months before the crops become growing crops by planting or otherwise takes priority over an earlier perfected security interest to the extent that such earlier interest secures obligations due more than six months before the crops become growing crops by planting or otherwise, even though the person giving new value had knowledge of the earlier security interest.<sup>8</sup>

Additionally, while there is no Iowa case law on point, a Colorado court<sup>9</sup> has held that a person holding a security interest in grain consumed by cattle in which the secured party had no interest did not acquire a security interest in the cattle by virtue of Article 9, section 9-315,<sup>10</sup> relating to commingled goods or by virtue of section 9-306(2)<sup>11</sup> relating to proceeds.<sup>12</sup> The court concluded that the feed, once eaten, loses its identity, ceases to exist, and there are no traceable proceeds to which a security interest may attach.<sup>13</sup>

#### B. *Development of Chapter 570A*

It is generally believed that the enactment of chapter 570A of the Iowa Code was in response to the farm debt crisis of recent years.<sup>14</sup> The classic dilemma that this chapter was intended to address involved a farmer who was indebted to a financial institution and who would seek additional credit

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8. Iowa Code § 554.9312(2) (1983). This limited purchase money security interest replaces prior law that provided for priority based upon the time of recording without regard to the purpose for which the loan was made. See *id.* § 556.13 (1962).

9. *First Nat'l Bank v. Boston*, 39 Colo. App. 107, 564 P.2d 964 (1977).

10. *Id.* at \_\_\_, 564 P.2d at 966. The corresponding Iowa statutory provision provides in pertinent part:

(1) If a security interest in goods was perfected and subsequently the goods or a part thereof have become part of a product or mass, the security interest continues in the product or mass if

- the goods are so manufactured, processed, assembled or commingled that their identity is lost in the product or mass; or
- a financing statement covering the original goods also covers the product into which the goods have been manufactured, processed or assembled.

Iowa Code § 554.9315 (1983).

11. Iowa Code Section 554.9306(2) provides:

Except where this Article otherwise provides, a security interest continues in collateral notwithstanding sale, exchange or other disposition thereof unless the disposition was authorized by the secured party in the security agreement or otherwise, and also continues in any identifiable proceeds including collections received by debtor.

Iowa Code § 554.9306(2) (1983).

12. *First Nat'l Bank v. Boston*, 39 Colo. App. at \_\_\_, 564 P.2d at 966.

13. *Id.* at \_\_\_, 564 P.2d at 966-67.

14. Since the Iowa Legislature maintains no record of legislative history on its enactments, this portion of the article, while technically unsupported by the record, is supported by the personal collective knowledge of the authors.

from the financial institution for the seed, fertilizer, and petroleum products for spring planting.<sup>15</sup> Typically, the financial institution would have its previous advances secured in collateral of the farmer. As the farmer's debt began to equal or to exceed the value of the collateral, the financial institution would become hesitant to loan additional sums without adequate collateral. If the farmer was unable to obtain financing from the financial institution for the spring planting, he might then have turned to an agricultural supply dealer for a sale of the needed items on credit. A prudent agricultural supply dealer when confronted with the financial condition of the farmer and the secured position of the bank in the collateral of the farmer would not likely extend credit and, therefore, be subject to the financial institution's superior secured position. As a result, if the farmer was unable to plant his crops, he would be unable to make his payments on his debt, and the unraveling of the farming operation would begin. The farmer needed credit to plant a new crop and without a new crop generating cash flow the farmer could not pay his old debts.

It was this dilemma that chapter 570A was most likely intended to address by providing the agricultural supply dealer in that instance with the possibility of obtaining a more enhanced position in the crops and livestock of the farmer. With the possibility of a superior or equal interest in the crops and livestock of the farmer, the agricultural supply dealer would be more willing to extend credit which would allow the farmer to continue farming.

In order to draft the necessary legislation to provide this enhanced position to agricultural supply dealers and to further the public policy of promoting the extension of credit for the continued existence of debt-troubled farmers, the Iowa legislature examined the legislation of other states. One state that had provided some protection for agricultural supply dealers was Nebraska.<sup>16</sup> Specifically, the Nebraska legislature had enacted a "Petroleum Products Lien"<sup>17</sup> and "Fertilizer Liens."<sup>18</sup>

The Nebraska Petroleum Product Lien provides for a "lien upon all such crops produced and owned by the person to whom such fuel . . . had been furnished,"<sup>19</sup> for agricultural purposes. In this context, the party seek-

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15. The corollary to this would be the necessity to provide feed for livestock.

16. See NEB. REV. STAT. §§ 52-901 to 904 (1984);

*id.* §§ 52-1101 to 1103 (1984).

17. NEB. REV. STAT. §§ 52-901 to 904 (1984).

18. *Id.* §§ 52-1101 to 1103.

19. *Id.* § 52-901 (1984). Section 52-901 specifically provides the following:

Any person who furnishes gasoline, diesel fuel, tractor fuel, oil, grease, or other petroleum products to another to be used in farm machinery for power or lubricating purposes in the production of any agricultural crop shall be entitled to a lien upon all such crops produced and owned by the person to whom such fuel or lubricant had been furnished to secure the payment of the purchase price thereof, upon compliance with the provisions of Sections 52-901 to 52-904.

ing to perfect the lien must file a "verified notice of such lien" with the clerk of the county where the crops were produced.<sup>20</sup> The perfected lien follows the collateral into the hands of a purchaser of the crops and can be foreclosed on pursuant to Article 9.<sup>21</sup> This lien, however, does not survive in the crops of an "innocent purchaser or dealer in the usual course of trade" unless all the required notices have been given.<sup>22</sup>

The Fertilizer Lien provides that a supplier of agricultural chemicals, machinery for application, and labor can secure a lien for the value of the goods and services in the crops grown on the property to which the fertilizer was applied.<sup>23</sup> Again, this lien is perfected by "filing a notice of lien with the

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*Id.*

20. *Id.* § 52-902 (1984). Section 52-902 specifically provides the following:

Within six months after the fuel or lubricant, referred to in section 52-901, has been furnished, the person selling such fuel or lubricant shall file with the clerk of the county in which the crop, referred to in section 52-901, is produced a verified notice of such lien, which notice shall show (1) the name and address of the person claiming the lien, (2) the name of the person to whom such fuel or lubricant has been furnished for use in farm machinery in the production of crops, (3) a description of the land upon which such crop or crops were grown, (4) the amount of fuel or lubricant furnished, and (5) the amount due for furnishing such products.

*Id.*

21. *Id.* § 52-903 (1984). Section 52-903 specifically provides:

From and after the date of filing of the notice provided for in section 52-902, the claimant shall have a lien upon the crops produced and owned by the person to whom the fuel or lubricant, referred to in section 52-901, had been furnished to the amount of the purchase price of such fuel or lubricant so sold to such person. In the event the person to whom such fuel or lubricant was furnished desires to sell or deliver any portion of the crop so produced, such person so desiring to sell or deliver the same shall notify the consignee or purchaser that such petroleum bill has not been paid. Such lien shall shift to the purchase price thereof in the hands of the purchaser or consignee above mentioned in this section. In the event any portion of such crops is sold or consigned with the consent or knowledge of the person entitled to a lien thereof within six months after the date such fuel or lubricant was furnished, such lien shall not attach to any portion of such crops or to the purchase price thereof, unless the person entitled to such lien shall notify the purchaser in writing thereof. Such lien may be foreclosed in the manner and form provided for the foreclosure of secured transactions as provided in article 9, Uniform Commercial Code; *Provided*, such foreclosure shall be instituted within thirty days after the filing of the lien.

*Id.* One of the issues left unanswered by chapter 570A is the extent of the lien in the possession of a purchaser of the collateral. See *infra* notes 117-123 and accompanying text.

22. NEB. REV. STAT. § 52-904 (1984). Section 52-904 specifically provides:

Such lien shall not attach to any portion of such crops, in the hands of an innocent purchaser or dealer in the usual course of trade, unless all the notices provided for shall have been given. In the event the fuel or lubricant was furnished to a person on rented or leased land, the lien shall not apply to the landlord's or lessor's share of the crop produced. The lien shall not be assignable.

*Id.*; see *infra* notes 118-120 and accompanying text.

23. NEB. REV. STAT. § 52-1101 (1984). Specifically, section 52-1101 provides the following:

A person, including a firm or corporation, who shall contract or agree with another (1) to furnish any fertilizer, soil conditioner, or agricultural chemical, (2) to furnish ma-

county clerk."<sup>24</sup> Unlike chapter 570A, however, the Nebraska law provides that the Fertilizer Lien is subordinate to prior lienholders unless the prior lienholder consents to the subordination in writing.<sup>25</sup>

The Nebraska lien laws have not been the subject of extensive construction and interpretation by the Nebraska courts. In *O'Neill Production Credit Association v. Schnoor*,<sup>26</sup> however, the court addressed the issue of whether cattle were "crops" under the meaning of section 52-901.<sup>27</sup> The court concluded that the cattle of the debtor were not crops and accordingly, no petroleum lien attached to the cattle.<sup>28</sup>

It is apparent, even by a cursory examination of the Nebraska statute, that while the legislature has protected agricultural supply dealers to some extent, the statute does not offer a comprehensive program to promote the public interest of making credit available to debt-troubled farmers by providing enhanced credit positions for agricultural supply dealers. It was within this context that the Iowa Legislature enacted chapter 570A.

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achinery and equipment for the application of such products, or (3) to perform work or labor in the application of such products shall have a lien for the agreed charges, or in the absence of an agreement, for the reasonable charges and costs of satisfying such lien, upon the crops produced within one year upon the land where such product was applied, the machinery or equipment for application was used, or the work or labor of application was performed, and upon the proceeds from the sale of the crops.

*Id.*

24. *Id.* § 52-1102 (1984). Specifically, section 52-1102 provides the following: Any lien under Section 52-1101 shall be perfected by filing a notice of lien with the county clerk of the county where the land is located upon which the crops are growing or are to be planted. The notice of lien shall state (1) the name and address of the person to whom any product, machinery, or equipment was furnished or for whom work or labor was done, (2) the name and address of the person claiming the lien, (3) the last date upon which such product, machinery, or equipment was furnished or work or labor done under the contract, and (4) the legal description of the land upon which the crops are growing or are to be planted.

*Id.*

25. *Id.* § 52-1103 (1984). Specifically, section 52-1103 provides: In order to be valid against subsequent lienholders, any lien under section 52-1101 shall be filed within sixty days of the last date upon which the product, machinery, or equipment was furnished, or work or labor was performed under the contract, but in no event shall it have priority over prior lienholders unless prior lienholders have agreed to the contract in writing. Such lien shall attach as of the date of filing and may be foreclosed in the manner and form provided for the foreclosure of secured transactions as provided in article 9, Uniform Commercial Code.

*Id.*

26. 208 Neb. 105, 302 N.W.2d 376 (1981).

27. *Id.* at \_\_\_, 302 N.W.2d at 377. The provider of petroleum products argued that while the petroleum products were not sold for use in the cattle, "the petroleum was sold for the purpose of operating a pivot irrigation system which watered grass which was fed to the cattle" which entitled him to a petroleum lien. *Id.* at \_\_\_, 302 N.W.2d at 378.

28. *Id.* at \_\_\_, 302 N.W.2d at 378-79.

## II. DEFINITIONS

It is crucial for an accurate and complete understanding of the principles and procedures of chapter 570A to thoroughly analyze the definitions incorporated therein. In reviewing any legislation in retrospect, it is often evident that additional terms should have been developed and defined in the legislation. Chapter 570A is no exception. Rather than belaboring the omission of key definitions, however, this examination of chapter 570A will begin with the terms that have been specifically defined.

The three main principals involved in a chapter 570A transaction are the "farmer," "agricultural supply dealer," and the "financial institution." The character and attributes of each principal are expressly defined in the chapter.

A "[f]armer" means a person engaged in the business which has an agricultural purpose.<sup>29</sup> There are two major questions generated by this definition. Those questions are who is a farmer and what is an agricultural purpose. Primarily, absent further clarification in chapter 570A as to what "farmer" means,<sup>30</sup> reference to other provisions of the Code are necessary. "Unless otherwise provided by law, 'person' means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity."<sup>31</sup> An initial determination must be made by the agricultural supply dealer or financial institution as to whether an individual is seeking credit on his own behalf or on behalf of another farming entity.<sup>32</sup> In addition, chapter 570A requires that the "person" be engaged in an "agricultural purpose."<sup>33</sup>

"Agricultural purpose" means a purpose related to the production, harvest, marketing, or transportation of agricultural products by a person who cultivates, plants, propagates or nurtures the agricultural products, including agricultural, horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any other products raised or produced on farms.<sup>34</sup>

This is an extremely broad definition encompassing nearly all farming activities engaged in on Iowa farms.<sup>35</sup>

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29. IOWA CODE § 570A.1(5), *supra* note 1, at 114.

30. *See id.*

31. IOWA CODE § 4.1(13) (1983).

32. The problem associated with determining the identity of the "farmer" becomes accentuated in the context of determining who is authorized to waive the confidentiality of financial history of the entity and in determining who or what owns or controls the collateral which will be secured under chapter 570A. *See infra* notes 58-60 and accompanying text.

33. IOWA CODE § 570A.1(5), *supra* note 1, at 114.

34. *Id.* § 570A.1(2), *supra* note 1, at 114.

35. A broad interpretation of "agricultural purpose" is further bolstered by the direction of the legislature that "[Code] provisions and all proceedings under it shall be liberally construed with a view to promote its objects and assist the parties in obtaining justice." *Id.* § 4.2

The next principal to be examined is the "agricultural supply dealer." An "agricultural supply dealer" means a person engaged in the retail sale of agricultural chemicals, seed, feed, or petroleum products used for an agricultural purpose."<sup>36</sup> It is important to note that an agricultural supply dealer under chapter 570A must be involved in *retail* sales before the application of chapter 570A priorities is possible.<sup>37</sup> What constitutes "retail sales" is set out in the definition of an agricultural supply dealer.<sup>38</sup> "Agricultural chemical" means a fertilizer or agricultural chemical which is applied to crops or land which is used for the raising of crops, including but not limited to fertilizer as defined in section 200.3, and pesticide as defined in section 206.2"<sup>39</sup>; "Seed" means agricultural seeds which are used in the production

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(1983).

36. *Id.* § 570A.1(3), *supra* note 1, at 114. For the definition of agricultural purpose, see *supra* text accompanying note 34.

37. The Iowa Code provides:

"*Retail sale*" or "*sale at retail*" means the sale to a consumer or to any person for any purpose, other than for processing or for resale of tangible personal property or taxable services, or for resale of tangible personal property in connection with taxable services, and the sale of gas, electricity, water, and communication service to retail consumers or users, but does not include commercial fertilizer or agricultural limestone or materials, but not tools or equipment, which are to be used in disease control, weed control, insect control or health promotion of plants or livestock produced as part of agricultural production for market, or electricity or steam or any taxable service when purchased and used in the processing of tangible personal property intended to be sold ultimately at retail. Tangible personal property is sold for processing within the meaning of this subsection only when it is intended that such property shall by means of fabrication, compounding, manufacturing, or germination become an integral part of other tangible personal property intended to be sold ultimately at retail, or shall be consumed as fuel in creating heat, power, or steam for processing including grain drying or for generating electric current, or consumed in implements of husbandry engaged in agricultural production, or such property is a chemical, solvent, sorbent, or reagent, which is directly used and is consumed, dissipated, or depleted, in processing personal property which is intended to be sold ultimately at retail, and which may not become a component or integral part of the finished product. The distribution to the public of free newspapers or shoppers guides shall be deemed a retail sale for purposes of the processing exemption.

IOWA CODE § 422.42(3) (1983).

38. *Id.* § 570A.1(3), *supra* note 1, at 114.

39. *Id.* § 570A.1(1), *supra* note 1, at 114. Section 200.3(1) defines the term fertilizer as "any substance containing one or more recognized plant nutrients which is used for plant nutrient content and which is designed to use and claimed to have value in promoting plant growth except unmanipulated animal and vegetable manures or calcium and magnesium carbonate materials used primarily for correcting soil acidity." *Id.* § 200.3(1) (1983). Additionally, section 206.2(1) defines pesticide as:

(a) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating directly or indirectly any insects, rodents, nematodes, fungi, weeds, and other forms of plant or animal life or viruses, except viruses on or in living man, which the secretary shall declare to be a pest, and (b) any substances intended for use as a plant growth regulator, defoliant or desiccant.

*Id.* § 206.2(1). Generally pesticides include insecticides, miticides, nematicides, fungicides, and

of crops, including but not limited to agricultural seed as defined in section 199.1<sup>40</sup>; "Feed" means a commercial feed,<sup>41</sup> feed ingredient,<sup>42</sup> mineral feed,<sup>43</sup> drug,<sup>44</sup> animal health product, or customer-formula feed<sup>45</sup> which is used for the feeding of livestock, including but not limited to feed as defined in section 198.3<sup>46</sup>; and "Petroleum product" means a motor fuel<sup>47</sup> or special fuel<sup>48</sup> which is used in the production of crops and livestock, including but not limited to motor fuel as defined in section 324.2.<sup>49</sup>

The third principal in chapter 570A is the "financial institution." "Financial institution" means a bank, credit union, insurance company, mortgage banking company or savings and loan association, industrial loan company, production credit association, farmer's home administration, or like institution which operates or has a place of business in this state.<sup>50</sup> Additional definitions contained in chapter 570A will be discussed in the context of their usage in the other provisions of the Act.

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herbicides.

40. *Id.* § 570A.1(13), *supra* note 1, at 115. "Agricultural seed" means grass, forage, cereal, oils, fiber, and any other kind of crop seed commonly recognized within this state as agricultural seed, lawn seed, vegetable seed, or seed mixtures. Agricultural seed may include any additional seed the secretary designates by rules." *Id.* § 199.1(2) (1983); *see Iowa Admin. Code* § 30-5.1(199) (1976).

41. Section 198.3(4) of the code defines commercial feed in part as "all materials except whole seeds unmixed or physically altered entire unmixed seeds, when not adulterated . . . which are distributed for use as feed or for mixing in feed." *Iowa Code* § 198.3(4) (1983).

42. Section 198.3(5) defines feed ingredient as "each of the constituent materials making up a commercial feed." *id.* § 198.3(5) (1983).

43. Section 198.3(6) defines mineral feed as "a commercial feed ingredient intended to supply primarily mineral elements or inorganic nutrients." *Id.* § 198.3(6) (1983).

44. Section 198.3(7) defines drug as "any article intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in animals other than man and articles other than feed intended to affect the structure of any function of the animal body." *Id.* § 198.3(7) (1983).

45. Section 198.3(8) defines customer-formula feed as "commercial feed which consists of a mixture of commercial feeds or feed ingredients, or both, each batch of which is manufactured according to the specific instructions of the final purchaser." *Id.* § 198.3(8) (1983).

46. *Id.* § 570A.1(6), *supra* note 1, at 115.

47. Motor fuel is defined in part as "(a) all products commonly or commercially known or sold as gasoline . . . regardless of their classifications or uses; and (b) any liquid advertised, offered for sale, sold for use as, or commonly or commercially used as a fuel for propelling motor vehicles." *Id.* § 324.2(1) (1983).

48. "Special fuel" means and includes fuel oils and all combustible gases and liquids suitable for the generation of power for propulsion of motor vehicles also any substance used for that purpose, except that it does not include motor fuel as defined in the motor fuel tax law." *Id.* § 324.33(1) (1983).

49. *Id.* § 570A.1(11), *supra* note 1, at 115. Generally petroleum products include but are not limited to gasoline, diesel, liquid petroleum and gasohol used in the production of crops or livestock. It appears to be possible that an agricultural supply dealer who sells propane for the heating of livestock confinement buildings can secure a lien in the farmer's livestock in the building.

50. *Id.* § 570A.1(8), *supra* note 1, at 115.

### III. PROCEDURES IMPLEMENTING CHAPTER 570A

It is important to reiterate that a chapter 570A transaction involves the retail "sale on a credit basis"<sup>51</sup> of agricultural chemicals, seed, feed, or petroleum products used for agricultural purposes to a farmer by an agricultural supply dealer. In order to assess the desirability of selling on credit and the need for securing a chapter 570A interest in the farmer's collateral, the agricultural supply dealer should make some initial inquiries. These inquiries will not only promote a more informed decision as to the creditworthiness of the farmer, but will also lay the foundation for the implementation of the procedures of chapter 570A.

Preliminarily, the agricultural supply dealer should determine the identity of the farmer<sup>52</sup> requesting credit. An individual may be representing himself or a business association, such as a partnership or corporation.<sup>53</sup> Additionally, the agricultural supply dealer should determine the identity of the financial institutions with which the farmer does business. This information is vital in determining who may have a prior security interest in the collateral in which the agricultural supply dealer seeks to secure the credit obligation. The identity of the financial institutions may be obtained from the secretary of state.<sup>54</sup> With this information, the agricultural supply dealer can begin the chapter 570A process.

#### A. Certified Request and Waiver of Confidentiality

The formal process of chapter 570A is initiated by "the receipt of a certified request<sup>55</sup> of an agricultural supply dealer, [by a financial institution] prior to or upon a sale on a credit basis of agricultural chemicals, seed, feed, or petroleum products to a farmer."<sup>56</sup> While it is not clear from the legislation what the phrase "upon the sale" means, presumably, it could mean on the date of the sale or within a short period of time thereafter. It would be most prudent, however, for an agricultural supply dealer to make certain that the financial institution receives the certified request prior to

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51. *Id.* § 570A.1(12), *supra* note 1, at 115. "'Sale on a credit basis' means a transaction in which the purchase price is due on a date after the date of sale." *Id.*

52. See *infra* notes 53, 60 and accompanying text.

53. Since corporate formalities may not always be followed in a family farm corporation, the identification of the farmer takes on additional importance. This identification consideration is also addressed in the context of the waiver of confidentiality. See *infra* notes 60-61, 65 and accompanying text.

54. Presently the secretary of state has established a phone line for inquiries into the filings under the U.C.C. This procedure serves to expedite the time it takes for a response to a U.C.C. form 11.

55. IOWA CODE § 570A.1(4), *supra* note 1, at 114. "'Certified request' means a request delivered by registered or certified mail, or a request delivered in person in writing signed and dated by the respective parties." *Id.*

56. *Id.* § 570A.2, *supra* note 1, at 115.

the sale.

The certified request must contain the amount of the purchase price and the terms of the sale.<sup>57</sup> The certified request must also be accompanied by a waiver of confidentiality signed by the farmer.<sup>58</sup> It is in the context of the waiver of confidentiality that the identity of the "farmer" is particularly important.<sup>59</sup> If the farmer is a corporation, a corporate resolution authorizing the individual to execute such a waiver may be required by the financial institution before releasing corporate credit history.<sup>60</sup> Additionally, a financial institution may require a signature of the farmer's spouse on the waiver of confidentiality if the farmer's and the spouse's credit history are so intertwined that the farmer's credit history cannot be extricated from the joint history.<sup>61</sup> Finally, a fifteen dollar filing fee is to be delivered to the bank.<sup>62</sup>

The certified request, waiver of confidentiality, and the fifteen dollar fee may be delivered to the bank by either registered or certified mail or by delivery in person.<sup>63</sup> If personal delivery is used, the written certified request must be dated and signed by the respective parties.<sup>64</sup>

#### B. Responses to the Certified Request by Financial Institutions

After a certified request has been received<sup>65</sup> by the financial institution

[the] financial institution which has either a security interest in collateral owned by the farmer or an outstanding loan to the farmer for an agricultural purpose shall issue within two business days<sup>66</sup> a memorandum

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57. *Id.* While not required specifically by chapter 570A, the prudent agricultural supply dealer should include, in addition to the name and address of the agricultural supply dealer, the name and address of the farmer, the fact that the certified request is pursuant to chapter 570A, the first date on which payment is due from the farmer, and the date on which final payment is due from the farmer. The last two items mentioned are important in the context of the perfection and enforcement of the lien. *See infra* note 125 and accompanying text.

58. Iowa Code § 570A.2(1), *supra* note 1, at 115.

59. *See supra* notes 31-32 and accompanying text.

60. By requiring such a resolution, the financial institution and agricultural supply dealer are better able to determine whether an officer or director was acting on behalf of the corporation or in his individual capacity. *See* H. HENN, CORPORATIONS § 224 (2d ed. 1970). A corporate officer may be impliedly authorized to do things, however which are "necessary, usual and proper" to effectuate the duties given to his office by the articles of incorporation. *See* Newberry v. Barth, Inc., 252 N.W.2d 711, 714 (Iowa 1977).

61. This is especially true since a bank is under a duty not to divulge confidential matters "known only to the bank and customer involved." *See* First Nat'l Bank v. Brown, 181 N.W.2d 178, 183 (Iowa 1970).

62. Iowa Code § 570A.2(1), *supra* note 1, at 116.

63. *Id.* § 570A.1(4), *supra* note 1, at 114.

64. *Id.*

65. It is important to note that "it shall be an affirmative defense to a financial institution and complete proof of superior priority of a financial institution lien that the financial institution . . . did not receive a certified request and a waiver signed by the farmer. . . ." *Id.* § 570A.2(3), *supra* note 1, at 116.

66. "Business day" is not specifically defined in chapter 570A. It is possible that the defi-

which states whether or not the farmer has a sufficient net worth or line of credit to assure payment of the purchase price on the terms of the sale.<sup>67</sup>

The phrase "issue a memorandum" is not defined in chapter 570A.<sup>68</sup> The method of delivery is also not specified.<sup>69</sup>

The memorandum, however, must state whether the farmer "has a sufficient net worth or line of credit to assure payment of the purchase price on the terms of the sale."<sup>70</sup> "Sufficient net worth", however, is not defined by chapter 570A, and no method for determining this "sufficient net worth" is provided.<sup>71</sup> An additional question left unanswered is whether the bank must respond to both the issue of sufficient net worth and line of credit.<sup>72</sup> The use of the term "or" may be either conjunctive or disjunctive.<sup>73</sup> Despite

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nition of banking day under section 554.4104(1)(c) of the Iowa Code would govern what constitutes a business day for banks in Iowa. This section provides that a "banking day" is part of any day on which a bank is open to the public for carrying on substantially all of its banking functions. *Id.* § 554.4104(1)(c) (1983). It may, however, be safer to assume that a business day includes any day the bank is open for business excluding only Sundays and legal holidays. This assumption is particularly based on the fact that a "financial institution" includes many entities besides banks. See *supra* note 50 and accompanying text.

In computing the two day period it would appear that section 4.1(22) of the code is applicable to the provisions of chapter 570A. Section 4.1(22) provides that in computing time, the first day be excluded and the last day included, unless the last day falls on Sunday, in which case the time prescribed shall be extended so as to include Monday. *IOWA CODE* § 4.1(22) (1983).

67. *IOWA CODE* § 570A.2(1), *supra* note 1, at 115.

68. Although the term is not defined in chapter 570A, it would appear that its issuance must be within the period of two business days and not necessarily from the time of receipt by the agricultural supply dealer.

69. Presumably, the memorandum would either be mailed or delivered in person within the two day period. It would appear to be better business practice that if the memorandum is mailed, it should be mailed by certified or registered mail and postmarked to show it was mailed within the two day period.

70. *Id.* § 570A.2(1), *supra* note 1, at 115.

71. The failure of the legislature to define "sufficient net worth" or to specify a formula for determining the same is particularly troublesome. It appears, however, that the financial institution must make the initial determination as to "sufficient net worth." Answering the certified request based upon the net worth may prove to be hazardous if the financial institution formula is determined to be incorrect since an insufficient net worth answer by the bank could conceivably provide a basis for a claim of defamation of credit. Because of this potential problem, it is more probable than not that the financial institution *will* respond to the request of whether a line of credit exists.

Another reason for responding to the request of whether a line of credit exists as opposed to the net worth of the farmer is the nature of the legal arrangement between the farmer and financial institution. The critical issue for a financial institution will be whether or not there is an arrangement between the farmer and the financial institution for the repayment of any undertaking of the financial institution and that such undertaking is subject to the documentation of the bank including security agreements, mortgages and other security documents.

72. See *id.* § 570A.2(1), *supra* note 1, at 116.

73. "It is a familiar rule of statutory construction . . . that the word 'and' is sometimes

these uncertainties in the law, a financial institution "shall" respond and its response determines the relative positions of priority between the agricultural supply dealer and the financial institution in the farmer's property.<sup>74</sup>

### 1. *The Farmer Has Sufficient Net Worth or Line of Credit.*

Chapter 570A provides:

If the financial institution states in its memorandum that the farmer has a sufficient net worth or line of credit to assure payment of the purchase price, the memorandum is an irrevocable and unconditional letter of credit to the benefit of the agricultural supply dealer for a period of thirty days following the date on which final payment is due for the amount of the purchase price which remains unpaid.<sup>75</sup>

"Letter of Credit" is defined as an "engagement by a financial institution to honor drafts or other demands for payment."<sup>76</sup> This response by the financial institution places the agricultural supply dealer in the most preferable position available under chapter 570A. In this situation, a formal lien is not created in the assets of the farmer, but rather, the bank itself is liable to the agricultural supply dealer for the value of the obligation.<sup>77</sup> This letter of credit, however, is only good "for a period of thirty days following the date final payment is due" from the farmer.<sup>78</sup>

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construed as disjunctive, such as 'or' and 'or' is sometimes construed as 'and.' Neas v. H.M. Iltis Lumber Co., 256 Iowa 588, 593, 128 N.W.2d 237, 239 (1964). In general it appears that lenders would prefer a disjunctive view and agricultural supply dealers a conjunctive view. Ultimately, however, the court must examine this provision in light of the principles of statutory construction. See Iowa Code § 4.6 (1983). It is the authors' view that the disjunctive use of "or" will probably prevail.

74. Iowa Code § 570A.2(1), *supra* note 1, at 115-16. Although the statute states that a financial institution "shall" respond, the legislature has provided for the situation where a financial institution does not respond. See *infra* note 90 and accompanying text.

75. Iowa Code § 570A.2(1), *supra* note 1, at 116.

76. *Id.* § 570A.1(10), *supra* note 1, at 115.

77. While chapter 570A does not specifically refer to the Uniform Commercial Code, it would appear that the irrevocable and unconditional letter of credit would be governed by Article 5. The U.C.C. comment to section 554.5114 of the Iowa Code describes a letter of credit as follows:

The letter of credit is essentially a contract between the issuer and the beneficiary and is recognized by this Article as independent of the underlying contract between the customer and the beneficiary. . . . In view of this independent nature of the letter of credit engagement, the issuer is under a duty to honor the drafts or demands for payment which in fact comply with the terms of the credit without reference to their compliance with the terms of the underlying contract. . . . The duty of the issuer to honor where there is factual compliance with the terms of the credit is also independent of any instructions from its customer once the credit has been issued and received by the beneficiary.

IOWA CODE ANN. § 554.5114 comment 1 (West 1967).

78. Iowa Code § 570A.2(1), *supra* note 1, at 116.

## 2. *The Farmer Does Not Have Sufficient Net Worth or Line of Credit.*

"If the financial institution does not state in its memorandum that the farmer has a sufficient net worth or line of credit to assure payment of the purchase price, the financial institution shall transmit the relevant financial history which it holds on the person."<sup>79</sup> The financial history of the farmer should accompany the memorandum and include "the record of a person's current loans, the date of a person's loans, the amount of the loans, the person's payment record on the loans, current liens against the person's property, and the person's most recent financial statement."<sup>80</sup> The financial history must also reasonably indicate that the farmer does not have sufficient net worth<sup>81</sup> or line of credit to assure payment of the purchase price.<sup>82</sup> If the financial institution states that the farmer does not have sufficient net worth or line of credit but the financial history reflects a sufficient net worth or line of credit, the agricultural supply dealer "may decide to make the sale and secure the lien."<sup>83</sup> If, however, the financial history does support the financial institution's negative response, this is an affirmative defense available to the financial institution and is also complete proof of priority that the financial history was accurate.<sup>84</sup>

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79. *Id.*

80. *Id.* § 570A.1(7), *supra* note 1, at 115.

81. Since chapter 570A is silent as to what "sufficient net worth" is, it is the financial institution that must first decide upon the test to be applied to determine net worth. The financial institution must decide if the farmer's net worth is sufficient. Once the financial history is delivered to the agricultural supply dealer, it is then the dealer's responsibility to determine whether there is sufficient net worth. Since "sufficient net worth" is not defined, considerable litigation may result as to whether the documentation in the financial history reasonably indicates sufficient net worth. *See supra* notes 71-72 and accompanying text.

An additional scenario that raises an issue as to the propriety of the financial institution's response is the one where a farmer has a line of credit of up to \$50,000.00, but the certified request states that the purchase price is \$60,000.00. In this instance, the farmer would not have a line of credit sufficient "to assure payment of the purchase price," and the financial institution's response would be no. In this situation, it may be advisable to have the agricultural supply dealer submit a new certified request for the extent of the line of credit and receive a letter of credit for the first \$50,000.00 of the purchase price. The agricultural supply dealer can then take a subordinate security interest in the collateral of the farmer for the balance of \$10,000.00.

82. *See Iowa Code* § 570A.2(2), *supra* note 1, at 116.

83. *Id.* Initially, it is the agricultural supply dealer's decision to whether the financial institution's "no" response is supported by the financial history. *Iowa Code* § 570A.2(2), *supra* note 1, at 116.

84. *Iowa Code* § 570A.2(3), *supra* note 1, at 116. Section 570A.2(3) provides:

Upon an action to enforce a lien secured under section 570A.3 against the interest of a financial institution secured to the same collateral as that of the lien, it shall be an affirmative defense to a financial institution and complete proof of the superior priority of the financial institution's lien that the financial institution either did not receive a certified request and a waiver signed by the farmer, or received the request and the waiver signed by the farmer, and provided the full and complete relevant financial history which it held on the farmer making the purchase from the agricultur-

To summarize, if the financial institution indicates that the farmer does not have sufficient net worth or line of credit, then it must supply a financial history of the farmer. If the history is accurate, the financial institution retains its superior position; but if it is inaccurate, the agricultural supply dealer may be granted a lien equal in priority to the financial institution, provided that the agricultural supply dealer elects to file a chapter 570A lien.<sup>85</sup>

When it is incumbent upon the financial institution to provide the financial history of the farmer, the confidentiality of the contents of this history is protected. "This financial history shall remain confidential between the financial institution, the agricultural supply dealer, and the farmer."<sup>86</sup> Violation of this provision by an agricultural supply dealer or financial institution may result in civil liability.<sup>87</sup>

### 3. *The Effect of the Financial Institution's Failure to Respond and Late and Incomplete Responses.*

If the financial institution receives a proper certified request but fails to issue a memorandum within two business days, the agricultural supply dealer may obtain an equal status in the crops and livestock of the farmer.<sup>88</sup> Similarly, if the memorandum is incomplete<sup>89</sup> or if the financial institution fails to respond, the agricultural supply dealer may obtain equal status with the financial institution.<sup>90</sup> The equal status, however, can only be obtained if

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tural supply dealer on which the lien is based and that financial history reasonably indicated that the farmer did not have a sufficient net worth or line of credit to assure payment of the purchase price.

*Id.*

85. *See id.* § 570A.2(3), .5(2), *supra* note 1, at 116, 119. Assuming that the "or" in "sufficient net worth or line of credit" is disjunctive (*see supra* note 73 and accompanying text), the possibility that a negative response to "sufficient net worth" could result in the agricultural supply dealer receiving an equal position will also promote the financial institutions responding only to the existence of a line of credit. *See supra* notes 83-85 and accompanying text. It would appear to be much simpler for a financial institution to respond only to the line of credit question since there is existing law as to the character and attributes of line of credit whereas there are no such guidelines for determining "sufficient net worth."

86. *Iowa Code* § 570A.2(1), *supra* note 1, at 116.

87. *See supra* notes 60-61 and accompanying text.

88. *See Iowa Code* § 570A.2(2), .5(2), *supra* note 1, at 116, 119 respectively.

89. *Iowa Code* § 570A.2(2), *supra* note 1, at 116. It is important to note that in this section, the reference is to an incomplete memorandum and not an inaccurate financial history. *Id.*

90. *See id.* § 570A.2(3), .5(2), *supra* note 1, at 116, 119 respectively. The failure to respond may be the most popular response of a financial institution since if the financial institution responds affirmatively, the agricultural supply dealer receives a letter of credit. On the other hand, if the financial institution answers negatively and supplies a financial history, it may be given equal status if the financial history is inaccurate. *See supra* notes 83-85 and accompanying test. If the financial institution fails to respond to the certified request, the most the agricultural supply dealer can receive is equal status with the financial institution. There-

the agricultural supply dealer elects to file the verified lien required in light of the late or incomplete response, or the total failure to respond, by the financial institution.<sup>91</sup>

#### IV. NATURE OF THE CHAPTER 570A LIEN

##### A. *Extent of Lien*

An agricultural supply dealer furnishing agricultural products relating to the production of crops has a lien for the value of such agricultural products, including the value of the labor<sup>92</sup> furnished.<sup>93</sup> This lien "attaches to all crops which are produced upon the land to which the agricultural chemical was applied within sixteen months following the last date on which the agricultural chemical was applied,<sup>94</sup> or produced from seed furnished, or produced using the petroleum product furnished."<sup>95</sup>

"An agricultural supply dealer furnishing feed to a farmer has a lien for the unpaid amount of the retail cost of the feed, including labor."<sup>96</sup> This livestock lien attaches "to all livestock consuming the feed."<sup>97</sup> The liens created in crops and livestock do not attach to the portions of crops or livestock of a "farmer who has paid all amounts due from the farmer for the retail cost, including labor" of the products provided.<sup>98</sup>

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fore, it would not be necessary for the financial institution to take the time to develop a financial history. Furthermore, there is no requirement that the financial institution return the \$15.00 fee that it collected when the certified request was submitted.

91. See Iowa Code § 570A.2(2), *supra* note 1, at 116.

92. "Labor" means labor performed in the application, delivery, or preparation of a product defined in subsections 1, 6, 11 and 13." Iowa Code § 570A.1(9), *supra* note 1, at 115. (products include agricultural chemical, feed, petroleum products, and seed).

93. Iowa Code § 570A.3(1), *supra* note 1, at 117.

94. The sixteen-month period was presumably inserted to permit an agricultural supply dealer which supplies fall fertilizer to have an interest in the next year's crops.

95. *Id.* An agricultural supply dealer may encounter difficulty in identifying crops to which its lien attached after harvest if such crops are commingled. Further, because there is no definition of "crops" in either the Iowa Uniform Commercial Code or chapter 570A, it is not clear whether harvested crops are considered "crops." See Meyer, "Crops" as Collateral for an Article 9 Security Interest and Related Problems, 15 U.C.C. L.J. 1, 4-5 (1982). It has been argued that the term "crops" is broad enough to cover harvested crops or that such harvested crops would be considered a product of a crop. *Id.* at 5-6. Even assuming that such a definition would be utilized, other questions arise where the farmer is no longer in possession of the crops. *Id.* at 6-8. The U.C.C. official comment to section 554.9109 of the Iowa Code states that when crops or livestock or their products come into the possession of a person not engaged in farming, they cease to be farm products. Iowa Code Ann. §554.9109 comment 4 (West 1967).

96. Iowa Code § 570A.3(2), *supra* note 1, at 117.

97. *Id.*

98. *Id.* § 570A.3(1), .3(2).

B. *Priority of a Chapter 570A Lien.*

1. *Compared to Statutory Liens.*

Generally, a verified lien under chapter 570A "is superior to a lien or security interest which attaches subsequent to the time the [verified] lien statement is filed with the secretary of state."<sup>99</sup> Chapter 570A, however, further provides that a verified lien is subordinate to the Landlord's lien<sup>100</sup> and to a Thresherman's or Cornsheller's lien.<sup>101</sup>

2. *Compared to Article 9 Security Interests.*

Generally, a chapter 570A lien in crops will be superior only to security interests which are filed subsequent to the filing of the verified lien statement.<sup>102</sup> A chapter 570A lien perfected in livestock, however, "takes priority over an earlier perfected lien or security interest to the extent of the difference between the acquisition price of the livestock and the fair market value of the livestock at the time the lien attaches or the sale price of the livestock, whichever is greater."<sup>103</sup> This special provision for priority of livestock liens may cause consternation in the financial institution community since it appears that where there is existing livestock with no acquisition price, the secured creditor will stand behind a verified lien to the full extent of the

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99. *Id.* § 570A.5(1), *supra* note 1, at 118-19.

100. *See id.* Chapter 570 provides for a landlord's lien and states that "[a] landlord shall have a lien for his rent upon all crops grown on leased premises, and upon any other personal property of the tenant which has been used or kept thereon during the term and which is not exempt from execution." *Iowa Code* § 570.1 (1983).

101. *See id.* § 570A.5(1), *supra* note 1, at 118-19. Chapter 571 provides for a Thresherman's or Cornsheller's lien and states that:

Any person, firm, corporation, or association engaged in operating a machine for the threshing, baling, or combining of agricultural kind of grain or seed, or for the baling of hay, straw, or any other farm product whether done by stationary or movable baler; or for the mechanical husking or shelling of corn; or for doing custom threshing, combining, mechanical husking, baling or corn shelling for hire, shall have a first lien on grain and seed threshed, or any farm product baled, or on corn shelled or husked, for the reasonable value of such services.

*Iowa Code* § 571.1 (1983).

102. *Iowa Code* § 570A.5(1), *supra* note 1, at 118.

103. *Id.* § 570A.5(3), *supra* note 1, at 119. The following example should illustrate this provision of 570A:

1) Fair market value at time of attachment	\$100,000
2) Sale price of livestock	80,000
3) Acquisition price of livestock	50,000
4) Amount of secured lien	50,000
5) Amount of verified lien	40,000
6) Amount to verified lien holder (greater of (1) minus (3) (or) (2) minus (3), not to exceed the extent of the lien)	40,000
7) Amount to secured creditor	40,000

value of the feed consumed.

Even though a chapter 570A lien may not be superior to a security interest in all instances, it does possess the unique attribute of potentially being an equal lien.<sup>104</sup> "A lien perfected under this chapter is equal to a lien or security interest which is of record or which is perfected prior to the time the lien statement is filed with the secretary of state except as provided in section 570A.2, subsection 3."<sup>105</sup> Generally, an agricultural supply dealer who elects to file a verified lien may obtain an equal lien with the holder of a prior perfected security interest in situations where: (1) the financial institution states that the farmer does not have sufficient net worth or line of credit but the financial history which is provided indicates a sufficient net worth or line of credit;<sup>106</sup> (2) the financial institution fails to make a response to the certified request or makes a late response;<sup>107</sup> and (3) the financial institution returns an incomplete memorandum.<sup>108</sup> Although an agricultural supply dealer may believe it has an equal lien in the collateral of the farmer, the ultimate test comes when the agricultural supply dealer seeks to enforce its lien.

Chapter 570A affords financial institutions with two affirmative defenses to an agricultural supply dealer's assertion of an equal lien.<sup>109</sup> The first affirmative defense is that the financial institution "did not receive a certified request and waiver signed by the farmer."<sup>110</sup> The second defense is that the financial institution advised the agricultural supply dealer that the farmer did not have sufficient net worth or line of credit and that the financial history provided to the agricultural supply dealer did in fact reflect insufficient net worth or line of credit.<sup>111</sup> Should the financial institution prove

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104. *Id.* § 570A.5(2), *supra* note 1, at 119. While there is no definition of the term "equal lien" included in the provisions of chapter 570A or any other provision of Iowa law, it is the position of the authors that where the collateral is not sufficient to satisfy both liens, the holder of the security interest and the holder of the verified lien will share pro rata. This is inferred from the structure of chapter 570A itself in that it provides a scheme of superiority and inferiority as well as equality. *See generally* IOWA CODE § 4.1-2 (1983).

105. IOWA CODE § 570A.5(2), *supra* note 1, at 119. Section 570A.2(3) relates to the affirmative defenses available to the financial institution. *See infra* notes 109-12 and accompanying text.

106. *See supra* notes 83-85 and accompanying text.

107. *See supra* notes 88 and 90 and accompanying text.

108. *See supra* note 89 and accompanying text.

109. *See* IOWA CODE § 570A.2(3), *supra* note 1, at 116-17.

110. IOWA CODE § 570A.2(3), *supra* note 1, at 116. This defense is particularly precarious to the agricultural supply dealer that receives no response from the financial institution and files the verified lien believing it places the dealer at an equal status. The financial institution may receive an improper or unsigned certified request, and rather than advising the agricultural supply dealer of the defect or omission at the time of receipt, it will instead wait until the agricultural supply dealer attempts to enforce its lien. At this point, it will be too late to rectify the mistake.

111. *Id.* § 570A.2(3), *supra* note 1, at 116-17. The authors believe that such a provision was intended to place the risk of doing business with a farmer without sufficient net worth or

its defense or defenses, it is "complete proof of the superior priority of the financial institution's lien."<sup>112</sup>

### 3. Compared to Other Chapter 570A Liens.

Where a farmer does business with more than one agricultural supply dealer, there is a possibility that two or more chapter 570A liens may attach to the property of the farmer. The first agricultural supply dealer to perfect his lien could possibly result in this dealer having an equal lien with the financial institution.<sup>113</sup> The question then becomes what is the status of the second agricultural supply dealer that perfects. In general, "[a] lien perfected under this chapter is equal to a lien or security interest which is of record or which is perfected prior to the time the lien statement is filed."<sup>114</sup> Presumably then, the second agricultural supply dealer would have an equal lien with the first agricultural supply dealer which has an equal lien with the financial institution.<sup>115</sup> In essence, this results in three equal liens.<sup>116</sup>

### 4. Extent of a Chapter 570A Lien After Sale of Property Subject to Lien.

Chapter 570A, unlike the Nebraska statute,<sup>117</sup> does not state whether the lien survives a sale to a purchaser. Because the Iowa Supreme Court has ruled, however, that a statutory landlord's lien on crops survives a sale to a

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line of credit on the party who continues to do business with the farmer knowing of his financial difficulties.

112. *Id.* § 570A.2(3), *supra* note 1, at 116.

113. See *supra* notes 83 and 85 and accompanying text.

114. Iowa Code § 570A.5(2), *supra* note 1, at 119.

115. *Id.* Section 570A.5(2) does not distinguish prior perfected security interests and prior perfected liens.

116. *Id.* As previously stated, it is the authors' opinion that "equal lien" means a pro rata distribution of proceeds of the collateral if the collateral is insufficient to satisfy all liens. See *supra* note 104. It is important to note, however, that the legislature has required the verified lienholder to give notice of its interest to secured creditors and lienholders who have an equal or subordinate interest. Iowa Code § 570A.4(5), *supra* note 1, at 118; see *infra* note 124 and accompanying text.

The parties to a chapter 570A transaction should be aware that the doctrine of marshalling assets may become a frequently litigated issue. Marshalling is an equitable doctrine developed historically and traditionally used to prevent a junior lienholder with a security interest in a single property from being squeezed out by a senior lienholder with a security interest not only in one property, but in one or more additional properties. The doctrine requires the senior lienholder to first resort to assets free of the junior lien to avoid the inequity which would otherwise result from the unnecessary elimination of the junior lienholder's security with the increased likelihood the junior creditor will be unable to satisfy its claim. The doctrine has been recognized in Iowa. See *Mead v. City Nat'l Bank*, 232 Iowa 1276, 1281 8 N.W.2d 417, 420 (1943). The issue then becomes one of whether a financial institution with an equal status with the agricultural supply dealer can have any possible proration on the full extent of its secured interest in the farmer's equipment and accounts, with the agricultural supply dealer's interest only in crops and livestock.

117. See *supra* notes 17-25 and accompanying text.

purchaser and the subsequent co-mingling of such crops, it seems likely to the authors that a chapter 570A lien would also be accorded such treatment.<sup>118</sup>

While the security interest on an Article 9 creditor purportedly survives a sale to a buyer in the ordinary course, the Iowa courts have limited this result in a series of decisions based on the secured creditor's waiver of the statutory protection due to the secured creditor's course of conduct in authorizing the debtor to sell collateral.<sup>119</sup> Likewise, the Iowa courts have ruled that a statutory landlord's lien can be waived or that the holder of such lien is estopped from asserting such lien.<sup>120</sup>

While it appears to the authors that it will be more difficult to establish the facts necessary to show a waiver of a statutory lien than it will be to show that a secured party has waived its security interest, it is nevertheless difficult to predict how the Iowa courts will rule. The prudent purchaser of farm products should search for chapter 570A liens<sup>121</sup> and take the traditional steps such as obtaining a release or waiver from the chapter 570A lienholder or making checks jointly payable to the chapter 570A lienholder and the seller of farm products.

Further, the statute of limitations applicable to conversion actions by secured creditors against purchasers of farm products has been reduced from five years to two.<sup>122</sup> Because the statutory language is limited to se-

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118. See *Prior v. Rathjen*, 199 N.W.2d 327, 332 (Iowa 1972).

119. See *Ottumwa Prod. Credit Ass'n v. Heinhold Hog Market*, 340 N.W.2d 801, 803 (Iowa Ct. App. 1983); *Hedrick Sav. Bank v. Myers*, 229 N.W.2d 252, 256 (Iowa 1975); *Lisbon Bank & Trust Co. v. Murray*, 206 N.W.2d 96, 97 (Iowa 1973). See also Iowa Code § 554.9307(1) (1983).

120. *Strasberger v. Farmers' Elevator Co.*, 184 Iowa 66, 71, 167 N.W. 184, 186 (1918); see *Hoyt v. Clemans*, 167 Iowa 330, 333, 149 N.W. 442, 443 (1914); *Randall v. Ditch*, 123 Iowa 582, 585, 99 N.W. 190, 191 (1904); *Fishbaugh v. Spunaugle*, 118 Iowa 337, 339, 92 N.W. 58, 59 (1902).

121. Senate File 510, as set forth below, amends section 554.9407(3) of the Iowa Code to provide that a creditor submitting a form UCC-11 to the Secretary of State will receive a certificate showing both chapter 570A liens and UCC filings against a debtor.

Sec. 12. Section 554.9407, subsection 3, Code Supplement 1983, is amended to read as follows:

3. Upon written request of any person, the filing officer shall issue a certificate showing whether there is on file on the date and hour stated therein, any presently effective financing statement or *verified lien statement under chapter 570A* naming a particular debt and any financing statement or *verified lien statement* changes and if there are, giving the date and hour of filing of each such filing and the names and addresses of each secured party therein. The uniform fee for such a certificate shall be four dollars if the request for the certificate is on a form conforming to standards prescribed by the secretary of state; otherwise, five dollars. Upon request and the payment of the appropriate fee the filing officer shall furnish a certified copy of any filed financing statement or financing statement changes or *verified lien statement or lien statement changes* for a uniform fee of one dollar per page.

1984 IOWA ACTS ch. 1072 § 12.

122. Section 614.1(10) of the code provides: "10. Secured interest in farm products.

cured claims, however, chapter 570A lienholders appear to have five years in which to bring their action for conversion.<sup>123</sup>

#### V. PERFECTION OF LIEN.

In order to perfect its lien, an agricultural supply dealer must file a verified lien statement with the office of the secretary of state.<sup>124</sup> The verified lien statement has a number of requirements as to what must be disclosed.<sup>125</sup> It is important to note that unlike section 554.9203(1)(a) which requires a description of the land concerned,<sup>126</sup> section 570A.4 requires a *legal description* of the real property, which under the Uniform Commercial Code is only required in the case of fixtures, timber to be cut, or minerals.<sup>127</sup> In instances where the agricultural supply dealer supplies chemicals or seed which are used on only a portion of the land owned or farmed by a farmer, it may be necessary to determine the correct legal description that must be included in the lien statement.<sup>128</sup> In addition, it appears that a more de-

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Those founded on a secured interest in farm products, within two years from the date of sale of farm products against the secured interest of the creditor." Iowa Code § 614.1(10) (1983).

123. Iowa Code section 614.1(4) provides:

4. *Unwritten contracts—*injuries to property—fraud—other actions.** Those founded on unwritten contracts, those brought for injuries to property, or for relief on the ground of fraud in cases heretofore solely cognizable in a court of chancery, and all other actions not otherwise provided for in this respect, within five years, except as provided by subsections 8 and 10.

Iowa Code § 614.1(4) (Supp. 1983).

124. *Id.* § 570A.4(1), *supra* note 1, at 117.

125. *Id.* The verified lien requires:

- a. The name and address of the agricultural supply dealer claiming the lien.
- b. An itemized declaration of the nature and retail cost of the agricultural chemical, seed, feed, or petroleum product which was furnished.
- c. The last date on which the agricultural supply dealer claiming the lien furnished the agricultural chemical, seed, feed, or petroleum product for which the lien is claimed.
- d. The first date on which the payment was due from the farmer for whom the agricultural chemical, seed, feed, or petroleum product was furnished.
- e. The name and address of the farmer for whom the agricultural chemical, seed, feed, or petroleum product was furnished.
- f. The legal description of the real property on which the crops to which the lien attaches are growing or are to be grown or the description of the livestock or animals to which the lien attaches.

*Id.*

126. *See id.* § 554.9203(1)(a) (1983).

127. Iowa Code § 570A.4, *supra* note 1, at 117; *see* Blomgren, *The Requirements for a Description of the Secured Collateral: Past, Present and Future*, 24 DRAKE L. REV. 611 (1975). Due to this requirement, it is important that a full legal description be included in the verified lien statement.

128. It would appear that a prudent agricultural supply dealer may want to include a reference to a larger tract than that area subject to the lien if it is unable to develop a precise legal description. If a larger area is included, it would at least encompass the area subject to the

tailed description of an interest in livestock is required under chapter 570A than under the Uniform Commercial Code.<sup>129</sup>

The time in which to file the verified lien statement with the secretary of state depends upon the nature of the products furnished. Agricultural chemicals or seed lien statements must be filed either within thirty-one days after the first date on which payment is due from the farmer, or on or before September 1 of the current crop year, whichever is earlier.<sup>130</sup> For a petroleum product, the lien statement must be filed either within thirty-one days after the first date on which payment is due from the farmer or on or before December 1 of the current crop year, whichever is earlier.<sup>131</sup> Finally, agricultural feed lien statements must be filed within thirty-one days after the first date on which payment is due from the farmer or on or before September 1 of the current crop year; however, lien statements relating to feed may be filed at the time the feed is purchased or delivered.<sup>132</sup>

At the time of filing a verified lien statement, the agricultural supply dealer is required to request a certificate from the secretary of state showing existing relevant security interests and liens on the collateral.<sup>133</sup> Upon receipt of the verified lien statement and request for a certificate showing other liens and security interests, the secretary of state "shall note the filing of a lien statement"<sup>134</sup> and issue a certificate showing any "presently effective financing statement or verified lien statement under chapter 570A naming a particular debtor."<sup>135</sup> Once the agricultural supply dealer receives the

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lien and place any additional creditors on notice of the agricultural supply dealer's interest. This holds true at least in the context of a financing statement: "[i]f there is any question in the mind of the prospective creditor following his inspection of the filed documents as to which property is actually encumbered, the properly filed financing statement has successfully done its job." Blomgren, *supra* note 127, at 616; *see* First Nat'l Bank v. Francis, 342 N.W.2d 468, 471 (Iowa 1984).

129. *See, e.g.*, First Nat'l Bank v. Waychus, 183 N.W.2d 728, 729 (Iowa 1971).

130. IOWA CODE § 570A.4(1), *supra* note 1, at 117.

131. *Id.*

132. *Id.* As a matter of procedure, agricultural supply dealers should file their lien statements as soon as possible, since section 570A.4(3) provides that a failure to file the lien statement within the times indicated by the statute will result in a forfeiture of the lien and all of its benefits. *Id.* § 570A.4(3), *supra* note 1, at 118. Further, the priority of the lien may be affected if the lien is not perfected and other liens, security interests, or other encumbrances attach or are perfected during this time.

133. IOWA CODE § 570A.4(5), *supra* note 1, at 118.

134. *Id.* § 570A.4(4), *supra* note 1, at 118. "The secretary of state shall enter on the lien statement the time of day and date of filing." *Id.* § 570A.4(2), *supra* note 1, at 118. As for the filing of the lien itself, the secretary of state charges four dollars if a standard form is used and five dollars if a nonstandard form is used. *Id.* § 570A.4(4), *supra* note 1, at 118. Additionally, there is a charge of four dollars for the request of the certificate of names and addresses of other creditors if in a standard form, and five dollars if a nonstandard form is used. See IOWA CODE § 554.9407 (1983) (as amended by Senate File 510). Finally, if a party requests copies of the verified liens or financing statements, the cost is one dollar per page. *Id.*

135. As a part of Senate File 510, section 554.9407, subsection 3 was amended to add

certificate from the secretary of state showing the holders of other security or 570A interests in the crops and livestock of the farmer, "[t]he agricultural supply dealer shall notify by registered mail any other creditor who holds a lien or security interest which is subordinate or equal to the agricultural supply dealer's lien."<sup>136</sup>

## VI. ASSIGNMENT, ENFORCEMENT, AND SATISFACTION OF A CHAPTER 570A LIEN

### A. Assignment

"A lien which has been perfected under this chapter is assignable, and follows the assignment of the debt for which it is claimed."<sup>137</sup> The assignment of an interest in a chapter 570A lien should be filed with the secretary of state.<sup>138</sup>

### B. Enforcement

#### 1. Applicability of Article 9, Part 5 Rights and Duties.

The holder of a chapter 570A lien may enforce the lien in the manner provided in Article 9, Part 5 of the Uniform Commercial Code<sup>139</sup> and for the purpose of such enforcement, the lienholder is deemed to be the secured party, and the farmer is deemed to be the debtor.<sup>140</sup> Generally, the mechanisms for enforcing an interest under Article 9 include:<sup>141</sup> (1) self-help repossession if it can be accomplished without a breach of the peace;<sup>142</sup> (2) volun-

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reference to verified lien statements as well as financing statements. See 1984 Iowa Acts ch. 1072 § 12.

136. Iowa Code § 570A.4(5), *supra* note 1, at 118. Thus, if the agricultural supply dealer desires to assert a superior or equal lien to any other lien, it is required under chapter 570A that all other lienholders be notified. It is important to note the notice can be by *registered* mail only. *Id.* Chapter 570A is not clear as to whether this notice must be sent immediately after the receipt of the certificate from the secretary of state and what penalty the agricultural supply dealer incurs if it does not send such notice. The prudent agricultural supply dealer, however, will promptly send such notice to avoid any possibility that its lien will be contested on that basis.

137. *Id.* § 570A.9, *supra* note 1, at 120.

138. See "Verified Lien Statement Assignment and Acknowledgment of Satisfaction," Form VLS-2 (form approved July 1, 1984 by the Iowa Secretary of State). No fee is charged for the filing of an assignment on this form.

139. Iowa Code § 554.9501 - .9507 (1983).

140. *Id.* § 570A.6, *supra* note 1, at 119.

141. It is not the intention of the authors to exhaustively detail and discuss the enforcement remedies under UCC article 9 in this article. It is the authors' purpose to merely identify and discuss the applicability of article 9 remedies.

142. See Iowa Code § 554.9503 (1983); Buckley, *The Future of Self-Help Repossession Under the Uniform Commercial Code*, 81 Com. L.J. 165 (1976).

tary turnover of the collateral by the debtor;<sup>143</sup> or (3) reducing the obligation secured by the lien to the judgment and obtaining satisfaction by ordinary post judgment execution.<sup>144</sup> A creditor may also want to consider the possibility of a replevin action pursuant to chapter 643 of the Iowa Code.<sup>145</sup>

Both the manner and duties of enforcing security interests are applicable to chapter 570A enforcement.<sup>146</sup> These duties include, but are not limited to, the lienholders giving the debtor reasonable notice of any public sale of the property subject to the lien or notice of the time after which private sale or other disposition may occur.<sup>147</sup> Also, every aspect of the sale or disposition of the property sold by the lienholder must be commercially reasonable.<sup>148</sup> Failure to comply with these statutory duties may defeat the creditor's right to a deficiency judgment.<sup>149</sup> Furthermore:

If it is established that the secured party is not proceeding in accordance with the provisions of this Part disposition may be ordered or restrained on appropriate terms and conditions. If the disposition has occurred the debtor or any person entitled to notification or whose security interest has been made known to the secured party prior to the disposition has a right to recover from the secured party any loss caused by a failure to comply with the provisions of this Part.<sup>150</sup>

Chapter 570A also provides that where a right or duty under Article 9 Part 5 is contingent upon the existence of express language in a security agreement or may be waived in the security agreement, the requisite language is not deemed to exist for the purposes of enforcement of the chapter 570A lien.<sup>151</sup>

## 2. *Special Provisions for Enforcement of Chapter 570A Liens.*

"An action to enforce a lien arising under this chapter may be com-

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143. It is recommended that this procedure be pursuant to a written agreement, wherein the debtor surrenders the collateral and waives the notice provision relating to the disposition of the collateral.

144. *Iowa Code* § 554.9501(1) (1983). If execution on the judgment is levied upon property subject to the lien, the execution should relate back to the priority position of the lien. *See id.* § 554.9501(5) (1983).

145. *See id.* § 643.1-22 (1983).

146. *See id.* § 570A.6, *supra* note 1, at 119.

147. *Iowa Code* § 554.9504(3) (1983). *See Lloyd's Plan Inc. v. Brown*, 268 N.W.2d 192, 195 (Iowa 1978).

148. *Iowa Code* § 554.9504(3) (1983).

149. *See, e.g., Lloyd's Plan Inc. v. Brown*, 268 N.W.2d at 195.

150. *Iowa Code* § 554.9507(1) (1983).

151. *Id.* § 570A.6, *supra* note 1, at 119. Examples of the application of this provision would include the situation where the right to require the debtor to assemble collateral under section 554.9503 would not be deemed to exist and the right to take possession of collateral without judicial process pursuant to section 554.9503 would not be deemed to have been waived by the lienholder.

menced in the district court after the lien is perfected.<sup>152</sup> Venue is proper "in any county in which some part of the crop and livestock or animals is located."<sup>153</sup> The action is to be tried in equity and "no other cause of action shall be joined with it."<sup>154</sup> A court may permit the amendment of a lien statement in an enforcement action "except as to the amount demanded."<sup>155</sup> The statute of limitations for an enforcement action is one year from the date the lien statement is filed.<sup>156</sup>

Chapter 570A also provides a mechanism by which "[a] person who has an interest in crops or livestock . . . may serve upon the lienholder a written demand that the lienholder commence an action to enforce the lien within thirty days after the date of service."<sup>157</sup> The demand for bringing suit must be in writing and served on the lienholder just as an original notice is served.<sup>158</sup> The return of service must then be filed with the secretary of state.<sup>159</sup> If the lienholder does not file suit within thirty days of the service of the demand, "the lien and all benefits of the lien are extinguished."<sup>160</sup> If the lienholder does commence an action, the lienholder must file a stamped copy of the petition with the secretary of state.<sup>161</sup> "Failure to file the copy of the petition will cause the verified lien statement to lapse."<sup>162</sup>

It would appear that the procedure for bringing suit is available to farmers, secured creditors, and holders of liens under chapter 570A where a subsequent lien is filed on the property subject to any of their interests.<sup>163</sup> This procedure may be useful to contest the validity of liens, and secured creditors may utilize this procedure to establish their priority by testing the merits of their affirmative defenses under chapter 570A.<sup>164</sup>

### C. Satisfaction.

When the lien is satisfied by payment, the lienholder must acknowledge the satisfaction of the lien in writing to the secretary of state.<sup>165</sup> If the

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152. *Id.* § 570A.7, *supra* note 1, at 119.

153. *Id.* This requirement creates an *in rem* approach to venue much like real estate actions and unlike the typical venue approach to personal property actions which provide that proper venue is the county of the residence of the plaintiff or defendant.

154. *Id.*

155. *Id.*

156. *Id.* at 119-20.

157. *Id.* § 570A.8(1), *supra* note 1, at 120.

158. *Id.*

159. *Id.* § 570A.8(2), *supra* note 1, at 120.

160. *Id.* § 570A.8(1), *supra* note 1, at 120.

161. *Id.* § 570A.8(3), *supra* note 1, at 120.

162. *Id.*

163. Section 570A.8 is available to "a person who has an interest in crops or livestock to which a lien attaches." *Id.* § 570A.8, *supra* note 1, at 120.

164. *Id.* This procedure might also be used to determine the priority as between holders of chapter 570A liens.

165. *Id.* § 570A.10, *supra* note 1, at 120.

lienholder fails to do so within thirty days after a written demand by a person having an interest in the property subject to the lien, the lienholder will be liable to such person for a penalty of twenty-five dollars, plus actual damages incurred as a result of the failure, plus attorney fees and court costs.<sup>166</sup> The chapter 570A provision regarding satisfaction will allow a procedure to clear the records of liens that have been satisfied by payment, but does not appear to be available to remove liens that are otherwise involved.<sup>167</sup>

## VII. COMMENTS

After reviewing and analyzing the previous discussion of chapter 570A, it should be apparent to the reader that this chapter in its present form is not a panacea for the debt-troubled farm economy. Without passing on the merits of the policy behind the law, it is evident that these public policies will not be promoted by means of a cumbersome and confusing statutory scheme. While some of the features of chapter 570A demonstrate insight, the positive aspects may be frustrated by the omissions and ambiguities in the statute. In order to make this chapter a viable alternative to farm creditors, the parties to the transaction must be able to comprehend the implications and ramifications of the new law. Absent additional legislation or extensive construction and interpretation by the courts, it will be difficult to convince farm creditors that this chapter is in their best interests.

Some possible solutions may be as simple as providing additional definitions. One possible clarification could be made as to the legal significance of an "equal lien."<sup>168</sup> The concept of an "equal lien" is fundamental to both the policy and procedure of chapter 570A, and yet, there is uncertainty as to its precise meaning and status.<sup>169</sup> The two alternative definitions of "equal lien" discussed in this article are that holders of equal lien share pro rata or they share based upon the time of filing.<sup>170</sup> While the authors have attempted to predict the meaning, it remains only a prediction.<sup>171</sup> Another consideration should be whether the doctrine of marshalling should apply between equal liens.<sup>172</sup> If marshalling is not permitted, it is possible that the objective of making credit available by providing an equal status to agricultural supply dealers may be frustrated.<sup>173</sup>

Another term which is subject to differing interpretation is "sufficient

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166. *Id.*

167. *Id.* To challenge the validity of a verified lien, the procedure of section 570A.8 may be available. See *supra* notes 150-53 and accompanying text.

168. See *supra* note 104 and accompanying text.

169. *Id.*

170. *Id.*

171. *Id.*

172. See *supra* note 116 and accompanying text.

173. See *supra* notes 14 and 116 and accompanying text.

net worth."<sup>174</sup> The parties to the transaction are left to their subjective interpretation of the terms, subject to subsequent judicial construction.<sup>175</sup> Absent further definition, there is no standard by which the financial institution may determine sufficient net worth in responding to a certified request and no means by which the agricultural supply dealer can determine the accuracy of the financial institution's initial assessment.<sup>176</sup> This is in spite of the fact that an improper determination may detrimentally effect the relative status of the creditors.<sup>177</sup>

An additional area of chapter 570A which warrants attention is the complicated and often overwhelming procedural requirements. The procedures of this chapter may tend to inhibit its use. One particularly troublesome attribute is the apparent advantage that a financial institution has in making no response to a certified request and simply returning the fifteen dollar fee.<sup>178</sup> This appears to be counterproductive to the intended purpose of chapter 570A and also appears to provide financial institutions a procedural harbor from actively participating in the intercourse of the chapter while still providing them the advantage of asserting the affirmative defense of never having received a "proper" certified request at the time enforcement of the 570A lien is sought.<sup>179</sup> The need for detailed procedure in chapter 570A is recognized because of the unique and somewhat summary fashion of realigning existing statuses between creditors. The procedures, however, should not be an obstacle for access to the chapter.

### VIII. CONCLUSION

Chapter 570A is a compromise between the interests of agricultural supply dealers and financial institutions. It is apparent that the new law will not constitute a panacea for the problems that plague the agricultural supply dealers. Although chapter 570A does not provide clear priority for liens of agricultural supply dealers, it will, nonetheless, cause considerable concern and uncertainty for financial institutions.

The foregoing analysis has isolated and described many of the uncertainties as well as the complicated procedures of the new law. It is probable that chapter 570A, absent further legislative directives, may engender additional litigation in the agricultural credit area which is already overburdened with expensive and time-consuming lawsuits. The most positive aspect of chapter 570A may be the provision for the waiver of confidentiality which will allow a more open and frank discussion between the agricultural supply dealer and the financial institution concerning the level of creditworthiness

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174. See *supra* note 81 and accompanying text.

175. See *supra* notes 81, 85, and 90 and accompanying text.

176. *Id.*

177. See *supra* notes 85 and 90 and accompanying text.

178. See *supra* notes 90 and 110 and accompanying text.

179. *Id.*

of a particular farmer. Promoting in principle an atmosphere of cooperation, rather than antagonism, between the financial institution and the agricultural supply dealer may be the most redeeming value of chapter 570A.\*\*\*

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\*\*\* *Author's Note*

Chapter 570A may be construed to contain two completely distinct concepts with regard to the priority of an agricultural supply dealer in crops and livestock. It may be possible to distinguish between the measures necessary to obtain an equal or superior status to financial institutions and the measures necessary to obtain a statutory lien for agricultural supply dealers, irrespective of the financial institution's status as a creditor. This apparent dichotomy arises from the language of Iowa Code section 570A.3(1) which provides that "[a]n agricultural supply dealer furnishing agricultural chemical, seed, or a petroleum product to a farmer has a lien for the retail cost of the agricultural chemical, seed or petroleum product, including labor furnished. *Iowa Code* § 570A.3(1), *supra* note 1, at 117; and section 570A.3(2) which provides that "[a]n agricultural supply dealer furnishing feed to a farmer has a lien for the unpaid amount of the retail cost of the feed, including labor." *Iowa Code* § 570A.3(2), *supra* note 1, at 117. The problem is that this language is unqualified and does not appear to be predicated upon the compliance with the procedures set forth for a certified request to a financial institution. *See Iowa Code* § 570A.2(1), (2), (3), *supra* note 1, at 115-17.