



To: IOWA NEBRASKA EQUIPMENT DEALERS ASSOCIATION

From: SAMUEL I. KREAMER, J.D., C.P.A.

Re: SECURITY INTERESTS IN EQUIPMENT

Date: 5/26/2015

Members of the Iowa Nebraska Equipment Dealers Association are increasingly confronting issues regarding security interests held by banks in equipment they either purchase outright or accept in trade on other equipment from customers.

As you are aware, when banks loan money they require collateral. The common practice is that everything the borrower owns or uses in the course of their business stands as collateral- including their farming equipment. This is sometimes referred to as a “blanket” since it “covers” everything the borrower owns. The interest of the bank in the collateral is called a “security interest.”

In its BRIEFEST expression, the law on this matter is as follows:

Under the Uniform Commercial Code (the “UCC”) if the bank has filed a notice of its security interest with the Secretary of State, if the borrower fails to pay their loan to the bank, the bank is entitled to obtain possession of the equipment which is subject to their security interest, sell it, and retain the sales proceeds as a payment on the customer’s loan.

Unless the bank issues a release of their security interest, when a dealer buys (or accepts in trade) equipment which is subject to a bank’s security interest (serves as collateral for a loan), the security interest of the bank FOLLOWS the equipment.

Accordingly, even if the dealer has fully paid the customer for the equipment, if a bank holds a security interest in the equipment *which is not released as part of the sale or trade-in*



transaction, the bank can **repossess** the subject equipment from the dealer, or from the customer to whom the dealer sold the equipment, sell it, and retain all of the proceeds. The dealer (who is also liable to a customer who buys the subject equipment from them) is stuck with trying to recoup their loss from the customer from whom they purchased or received the equipment (who normally has no funds at that point).

Enclosed you will find three forms I have prepared to help protect dealers from losses due to unreleased security interests.

DEALERS SHOULD ALSO DO A UCC SEARCH ON THE CUSTOMER'S NAME (AS WELL AS THE NAME OF ANY BUSINESS ENTITY THE CUSTOMER OWNS) **EVERY** TIME THEY PURCHASE EQUIPMENT FROM A CUSTOMER OR ACCEPT EQUIPMENT IN TRADE.

At the Annual meeting in Okoboji to be held on July 14, 2015 I will be making a presentation on this topic. I look forward to seeing you there and answering any questions you may have.