The Oklahoma Livestock Owner's Lien Act

Legislature takes swift action to protect Oklahoma producers

McAfee & Taft AgLINC Newsletter - June 2011

By Jeff Todd

Prior to November 2010, Eastern Livestock Company, LLC ("Eastern") was one of the largest cattle brokerage companies in the United States. Eastern bought and resold cattle throughout the country under a variety of contractual arrangements. In many cases, Eastern would buy and then immediately ship and resell the cattle. In November 2010, the speed of such cattle transactions proved disastrous to hundreds of cattle producers when Eastern's primary lender froze Eastern's accounts, causing millions in checks paid for cattle purchases to bounce.

Eastern was eventually put into bankruptcy which is currently pending in the United States Bankruptcy Court for the Southern District of Indiana (Case 10-93904-BHL-11). Numerous Oklahoma cattlemen were negatively affected by the Eastern debacle. While it could not fix the problem caused by Eastern in 2010, the 2011 Oklahoma Legislature took prompt steps to protect Oklahomans from being put in a similar position in the future. Senate Bill 530, known as the Oklahoma Livestock Owner's Lien Act of 2011 (the "Act"), quickly moved through the legislature and was signed into law on April 26, 2011. The Act will become effective on November 1, 2011. (A copy of SB 530 to be codified at 4 Okla. §§ Stat. 201.1-.11 may be found here).

The purpose of the Act is to protect the rights of Oklahoma livestock owners by granting a statutory lien to secure payment of the sales price negotiated by the livestock owner for his stock. The intended benefit of the Act is to put Oklahoma producers in the position of holding a secured claim either in (i) the livestock sold, or (ii) the proceeds held from the resale of the livestock. The statutory lien exists only until the owner or his sales agent (i.e. sale barn or auction) receives payment of the sales price. Recognizing that most livestock transactions involve a lender, the Act provides that the lien accrues to the benefit of the livestock owner's secured lender who may also be exposed to loss by the nature of livestock transactions.

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JUNE 2011

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An important aspect of the Act is to insure that the statutory lien does not interrupt commerce or discourage the resale or secondary purchase of the livestock. Accordingly, if a buyer (such as a broker like Eastern) immediately resells the livestock in good faith, the lien “jumps” from the livestock and attaches to the proceeds received on the resale of the livestock. Thus, secondary purchasers can be confident that they are taking the livestock free and clear of the statutory lien. The Act also addresses typical lien issues and other circumstances particular to livestock transactions:

- Section 201.4 provides that the lien is perfected automatically without filing of documentation.
- Section 201.5 addresses issues where small lots of livestock are commingled and grants a lien in a percentage of the commingled herd.
- Section 201.7 provides that the statutory lien has priority over other liens (except for liens already in existence).
- Section 201.9 protects owner’s from being forced to waive their rights granted under the Act.
- Section 201.10 provides for the enforcement of the lien in ways similar to the enforcement of other statutory liens.
- Section 201.10(B) protects Oklahoma sale barns and auctions which often pay livestock owner’s and assume the risk of payment by brokers and in such cases allows the sales agent to step into the shoes of the livestock owner to enforce the lien.

The lien created by the Act will give Oklahoma producers added security and means of collection if their buyer breaches while still possessing the cattle.
Jeff Todd represents ag producers nationwide and assisted Oklahoma lawmakers in the drafting of Senate Bill 530.

LINKS

- Jeff Todd's bio
- *McAfee & Taft AgLINC Newsletter* - June 2011
- McAfee & Taft's Agriculture and Equine Industry Group

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