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# Clear title law protects buyers of ag products

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## Quick Facts

- A new federal law is designed to protect a buyer of farm products from paying twice for one purchase.
- It replaces an old Colorado law in which the buyer of farm products assumed responsibility for determining whether the products were pledged as collateral on a loan, which often required the buyer to pay twice for one purchase.
- Under the new law, it is the responsibility of the lender or seller to notify potential buyers of a lien prior to sale.
- A buyer who purchases farm products without receiving a properly written notice of the lien within one year of the sale obtains clear title to the products purchased.
- A buyer who has received notice of a lender's lien should comply with the conditions set forth in the notice.

Under Colorado's old law, the buyer of farm products assumed responsibility for determining whether the products were pledged as collateral on a loan. If they were, and the buyer wasn't able to find out about it, he/she would sometimes have to pay twice for one purchase. Specifically, the buyer paid the seller at the time of purchase, and later would have to pay the lender who held a lien on the products purchased. This problem, sometimes called "double jeopardy," was viewed by a number of lawmakers as an obstruction to the transfer of farm products. It also was criticized for placing an unfair burden on an innocent buyer of farm products.

The near clear title system turns the tables. It becomes the responsibility of either the lender or the seller to notify potential buyers of a lien prior to sale. The buyer no longer is responsible for determining whether the farm products are pledged as collateral.

Specifically, the new law provides that a security interest (lien) will "follow" farm products to the buyer only if written notice of the lien was received by the buyer within the year prior to the date of sale. A buyer who purchases farm products without receiving a properly drafted written notice of the lien within one year of the sale obtains clear title to the products purchased even if there is a valid lien on the products purchased. The new law also provides that commission merchants and selling agents must receive the written notice in order to have the security interest lien "follow" the farm products. If the merchant or agent hasn't received the notices from the seller or lender, he or she will not be responsible for, or subject to the lien.

For example, assume that Fred Farmer purchases a purebred bull from a breeder for \$1,500. At the time of purchase the breeder advises Fred that the bull is not pledged as collateral and that the check should be made payable only to the breeder. A week later a loan officer from the local bank calls Fred and advises him that the breeder

A new federal law designed to protect a buyer of farm products from paying twice for one purchase became effective Dec. 23, 1986. The new law, commonly known as the "clear title" law, will cause major changes in the ways that producers, lenders and buyers of farm products deal with one another in transferring crop and livestock in Colorado.

The new law is part of the 1985 Food and Security Act. The federal law overrides the applicable Colorado statutes, which previously regulated this area of agricultural law. The only allowable alternative to the clear title law is a central filing system. Because Colorado failed to enact a central filing system by Dec. 23, 1986, the "clear title" law automatically became effective on that date.

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had pledged the bull as collateral on a loan and the bank will not release the lien unless Fred pays off the loan. Although Fred has suspected that this bank may have had a lien on the bull, he decided to take the breeder's word that there were no liens on it. Under the new law Fred would obtain clear title regardless of the lien unless, within one year prior to the sale, Fred had received a properly drafted notice, in writing, notifying him of the bank's security interest on the bull.

The new law provides that lenders may provide in their security agreements that the producer/borrower must furnish a list of potential buyers or agents to or through whom the farmer may sell the product. If the producer sells the product to a person not on the list, that producer—as seller—may be subject to a fine of \$5,000 or 15 percent of the value or benefit received for the farm products, whichever amount is greater.

A producer who sells farm products to a person not on the list can avoid the penalty by either (1) notifying the lender in writing of the identity of the buyer or agent at least 7 days prior to the sale, or (2) by accounting to the lender for the proceeds of the sale not later than 10 days after the sale.

A buyer who has received notice of a lender's lien should comply with the conditions set forth in the notice. One condition usually will be that the buyer's check for the purchase of the farm products must be made payable to both the seller and the lender. A buyer who doesn't comply may have to pay twice for the products just as under the old law.

**Author's Note:**

*This paper should not be used as a substitute for legal advice. Parties with actual legal questions concerning the topic of this paper should consult a qualified attorney.*