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### **Client Advisory**

**February 14, 2020**

#### **Producer's Liens - The Farmer's Secret Lien**

California laws provide “secret liens” for cultivators and seed producers (nurseries) that often times have priority over other types of commercial liens. *See* California Food & Agric. Code Section 55631, Agricultural producer's lien.

Section 55631 of the California Food and Agric. Code creates a producer's lien and states the following:

(a) Every producer of any farm product that sells any product that is grown by him or her to any processor under contract, express or implied, in addition to all other rights and remedies that are provided for by law, has a lien upon that product and upon all processed or manufactured forms of that farm product for his or her labor, care, and expense in growing and harvesting that product. The lien shall be to the extent of the agreed price, if any, for that product so sold. If there is no agreed price or a method for determining the price that is agreed upon, the extent of the lien is the value of the farm product as of the date of the delivery. Any portion of that product or the processed or manufactured forms of that product, in excess of the amount necessary to satisfy the total amount owed to producers under contract, shall be free and clear of that lien.

(b) Every producer of a flower, agricultural, or vegetable seed that sells seed that is grown by him or her, when the seed was purchased or supplied by the grower and not supplied by the dealer or an independent third party who paid for the seed, to any seed dealer under contract, express or implied, in addition to all other rights and remedies that are provided for by law, has a lien upon that product and upon all processed or manufactured forms of that product for his or her labor, care, and expense in growing and harvesting that product. The lien shall be to the extent of the agreed price, if any, for that product so sold. If there is no agreed price or a method for determining the price that is agreed upon, the extent of the lien is the value of that product as of the date of the delivery. Any portion of that product or the processed or manufactured forms of that product, in excess of the amount necessary to satisfy the total amount owed to producers under contract, shall be free and clear of that lien. CA Food & Agric. Sec. 55631.

The lien protects producers from nonpayment by processors. The intent of the producer lien laws was to protect a farmer who sells his or her commodities to a processor under a promise of payment at a later date. The basis for the adoption of the producers lien law was that the “grower has the



risk of producing the crop and it would be inequitable and contrary to the public interest in a viable agricultural industry to leave the grower vulnerable to insolvent processors.” *Frazier Nuts v. American Ag Credit* (2006) 141 Cal.App.4th 1263.

A producer is “any person that is engaged in the business of growing or producing any farm product.” Cal. Food & Ag. Code §55408. Clearly, a licensed cultivator or nursery would be a producer as so defined.

According to Cal. Food & Ag. Code §55407, a “processor” is:

[A]ny person that is engaged in the business of processing or manufacturing any farm product, that solicits, buys, contracts to buy, or otherwise takes title to, or possession or control of, any farm product from the producer of the farm product for the purpose of processing or manufacturing it and selling, reselling, or redelivering it in any dried, canned, extracted, fermented, distilled, frozen, eviscerated, or other preserved or processed form. It does not, however, include any retail merchant that has a fixed or established place of business in this state and does not sell at wholesale any farm product which is processed or manufactured by him.

Clearly, a licensed processor or licensed manufacturer is a processor.

The producer’s lien arises automatically without any filing requirement and is “on every farm product and any processed form of the farm product which is in the possession of the processor without segregation of the product.” Cal. Food & Ag Code Section 55634. In other words, a processor may commingle agricultural products from California producers and other producers and the California producers retain a lien over the commingled crop inventory. *In re California Pacific Rice Milling* 265 B.R. 237 (E.D. Cal. 2001). Commingling product does not extinguish the lien.

The lien attaches upon delivery of the product, or if there is a series of deliveries, from the date of the last delivery. Cal. Food & Ag Code §§55632, 55634. The producer’s lien has priority over all other liens, claims, or encumbrances, except for limited circumstances involving labor claims and warehousemen’s liens. Cal. Food & Ag Code §§55632, 55633, 55635.

Where a producer’s lien has attached, it is unlawful for a processor to remove, “from this state or beyond his ownership or control, any farm product which is delivered to him, or any processed form of the farm product, to which any of the liens provided in this chapter have attached.” Cal. Food & Ag. Code §55638. However, a processor is not prohibited from selling the farm product to which a lien has attached, so long as the total proceeds from the sale are used to satisfy the producer’s liens.

The producers lien is possessory; if the processor transfers title and possession of the products, the lien is extinguished. Cal. Food & Ag. Code §55634. To release a lien, the processor can, among



other things, issue payment or security for the product (i.e., posting a bond in the amount of the lien). Cal. Food & Ag. Code §§55637, 55639.

The advantages of the producers lien is that it has priority over numerous commercial liens and it is an inexpensive means of securing payment for products by farmers. However, the disadvantages are that it is a possessory lien and is extinguished when possession is transferred.

If you are a licensed cultivator or nursery and you have not been paid, I strongly recommend asserting your rights as a producer under the producer's lien on crop inventory.

Sending a notice to the processor such as the following is recommended (see attached form):

[Cultivator] holds a statutory Producer's Lien under Section 55631 of the California Food and Agriculture Code which lien is senior and superior to any and all other liens that may exist on the crop, farm products, products derived therefrom and sales proceeds thereof, in an amount of at least \$\_\_\_\_,000. Please see the attached notice of claim. Section 55638 of the Food & Agric. Code makes it unlawful for your client, the processor (\_\_\_\_\_), to remove the crop, farm products or products derived therefrom, or sales proceeds thereof, from its control unless [Cultivator] is first paid.

This lien extends to proceeds from the sale of goods. See *Frazier Nuts v. American Ag Credit*, 46 Cal. Rptr. 3d 869, 871 (Cal.Ct. App. 4th 2006) ("Cal. Food & Agric. 55638 imposes a legal obligation on processors to use the proceeds of farm products to pay producers and further creates a correlative right in producers to the sales proceeds").

The producer's lien may also be enforced by the California Department of Food and Agriculture. [Cultivator] would be willing to release its senior statutory lien in exchange for other adequate security.

Attached form of Producer's Lien Notice can be used to notify processors or manufacturers that hold Farmer product of the secret lien and its seniority and threat of enforcement.

If our firm may assist any Farmer client in this process, please let us know.



**Form of Notice of Producer's Lien**

**CLAIM OF PRODUCER'S LIEN**

\_\_\_\_\_[INSERT LICENSED CULTIVATOR'S NAME]\_\_\_\_\_ ("**Claimant**") hereby claims a producer's lien (CA Food and Agriculture Code 55631) on the crops and farm products grown by Claimant and delivered to \_\_\_\_\_[INSERT NAME OF PROCESSOR OR MANUFACTURING THAT ACCEPTED THE CROP/FARM PRODUCTS]\_\_\_\_\_ and its affiliated companies ("**Processor**") and located at \_\_\_\_[INSERT PROCESSOR/MANUFACTURER ADDRESS]\_\_\_\_, for the sum of \$\_\_\_\_,000 (the "**Obligations**"). This lien has attached and is senior to any and all other liens on Processor. It is unlawful for Processor to remove from its ownership or control any farm product which was delivered to Processor by Claimant, or any processed form of the farm product, to which this lien has attached unless the proceeds of the sale are used to satisfy the Obligations to Claimant that are secured by the lien.

		Date: _____, 2020
		CLAIMANT:
		[__NAME OF CULTIVATOR]
		By: _____ Authorized Person