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An Agricultural Law Research Project

Requirements for Grain Dealers

State of Florida

Auditing

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Requirements for Grain Dealers

STATE OF FLORIDA

Current through the 2014 Reg. Sess. And Sp. "A" Sess. Of the Twenty-Third Legislature

West's F.S.A. § 604.21

604.21. Complaint; investigation; hearing

(1)

(a) Any person, partnership, corporation, or other business entity claiming to be damaged by any breach of the conditions of a bond or certificate of deposit assignment or agreement given by a dealer in agricultural products as hereinbefore provided may enter complaint thereof against the dealer and against the surety company, if any, to the department, which complaint shall be a written statement of the facts constituting the complaint. Such complaint shall include all agricultural products defined in s. 604.15(1), as well as any additional charges necessary to effectuate the sale unless these additional charges are already included in the total delivered price. Such complaint shall be filed within 6 months from the date of sale in instances involving direct sales or from the date on which the agricultural product was received by the dealer in agricultural products, as agent, to be sold for the producer. No complaint shall be filed pursuant to this section unless the transactions involved total at least \$500 and occurred in a single license year. Before a complaint can be processed, the complainant must provide the department with a \$50 filing fee. In the event the complainant is successful in proving the claim, the dealer in agricultural products shall reimburse the complainant for the \$50 filing fee as part of the settlement of the claim.

(b) To be considered timely filed, a complaint together with any required affidavits or notarizations must be received by the department within 6 months after the date of sale by electronic transmission, facsimile, regular mail, certified mail, or private delivery service. If the complaint is sent by a service other than electronic mail or facsimile, the mailing shall be postmarked or dated on or before the 6-month deadline to be accepted as timely filed.

(c) When multiple claims exist by a producer, a producer's agent or representative, or a dealer and the combined adjudicated amounts exceed the total amount of any bond and certificate of deposit, sales occurring 120 or more days after the oldest sale stated in any complaint filed by the same producer, producer's agent or representative, or dealer shall not be considered for payment from the proceeds of the bond or certificate of deposit in the event that the surety company or financial institution is called on to make payment.

(d) A person, partnership, corporation, or other business entity filing a complaint shall submit to the department the following documents: three completed complaint affidavits on a form provided by the department with an original signature of an owner, partner, general partner, or corporate officer and an original notarization on each affidavit. If the complaint is filed by electronic transmission or facsimile, the original affidavits and original notarizations shall be filed with the department not later than the close of business of the tenth business day following the electronic transmission or facsimile filing. Attached to each complaint affidavit shall be

copies of all documents to support the complaint. Supporting documents may be copies of invoices, bills of lading, packing or shipping documents, demand letters, or any other documentation to support the claim. In cases in which there are multiple invoices being claimed, a summary list of all claimed invoices must accompany the complaint.

(e) A dealer in agricultural products who is in compliance with ss. 604.15-604.34 may file a complaint with the department against another licensed dealer in agricultural products.

However, payment from a bond or certificate of deposit to a dealer shall occur only after all claims of producers or producers' agents or representatives have been paid in full except as provided pursuant to paragraph (c).

(f) Filing a complaint with the department does not constitute an election of remedies when the same or similar complaint is filed in another venue.

(g) The surety company or financial institution shall be responsible for payment of properly established complaints filed against a dealer, notwithstanding the dealer's filing of a bankruptcy proceeding.

(2) Upon the filing of such complaint in the manner herein provided, the department shall investigate the matters complained of; whereupon, if, in the opinion of the department, the facts contained in the complaint warrant such action, the department shall serve notice of the filing of complaint to the dealer against whom the complaint has been filed at the last address of record. Such notice shall be accompanied by a true copy of the complaint. A copy of such notice and complaint shall also be served to the surety company, if any, that provided the bond for the dealer, which surety company shall become party to the action. Such notice of the complaint shall inform the dealer of a reasonable time within which to answer the complaint by advising the department in writing that the allegations in the complaint are admitted or denied or that the complaint has been satisfied. Such notice shall also inform the dealer and the surety company or financial institution of a right to a hearing on the complaint, if requested.

(3) If the dealer files an answer admitting the allegations of the complaint and the department determines through inquiry of the complainant that the dealer has failed to satisfy same within 21 days after receipt of the notice of the filing of a complaint by any party whose substantial interests are determined by the department, the department shall thereupon order payment by the dealer of the amount found owed. In the event a party files a request that the complaint be held in abeyance pending a settlement agreement, the period of abeyance shall not exceed 6 months and successive periods of abeyance shall not be granted.

(4) If the dealer files an answer and denies the allegations of the complaint and waives a hearing, the department may order a hearing or enter an order based on the facts and circumstances set forth in the complaint and the respondent's answer thereto. If the department determines the complaint has not been established or fails to meet the provisions of this section, the order shall, among other things, dismiss the proceedings. If the department determines that the allegations of the complaint have been established, it shall enter its findings of fact accordingly and thereupon enter its order adjudicating the amount of indebtedness due to be paid by the dealer to the complainant.

(5) Any order entered by the department pursuant to this section shall become final and effective on the date filed with the department's agency clerk.

(6) Any party whose substantial interest is affected by a proceeding pursuant to this section shall be granted a hearing upon request as provided by chapter 120. Such hearing shall be conducted pursuant to chapter 120. The final order of the department, when issued pursuant to the recommended order of an administrative law judge, shall be final and effective on the date filed with the department's agency clerk. Any party to these proceedings adversely affected by the final order is entitled to seek review of the final order pursuant to s. 120.68 and the Florida Rules of Appellate Procedure. Should a complaint

forwarded by the department to the Division of Administrative Hearings be settled prior to a hearing pursuant to chapter 120, the department shall issue a notice closing the complaint file upon receipt of the administrative law judge's order closing the complaint file, and the matter before the department shall be closed accordingly.

(7) Any indebtedness set forth in a departmental order against a dealer shall be paid by the dealer within 15 days after such order becomes final.

(8) Upon the failure by a dealer to comply with an order of the department directing payment, the department shall, in instances involving bonds, call upon the surety company to pay over to the department out of the bond posted by the surety company for such dealer or, in instances involving certificates of deposit, call upon the financial institution issuing such certificate to pay over to the department out of the certificate under the conditions of the assignment or agreement, the amount called for in the order of the department, not exceeding the amount of the bond or the principal of the certificate of deposit. If the bond or the principal of the certificate of deposit is insufficient to pay in full the amount due each complainant as set forth in the order of the department, the department shall distribute the proceeds pro rata among such complainants. The proceeds from a bond or the principal from a certificate of deposit shall be paid directly to the department to be distributed by it to successful complainants, except the accrued interest on a certificate of deposit shall be paid to the dealer. Such funds shall be considered trust funds in the hands of the department for the exclusive purpose of satisfying duly established complaints. Payments made to the department pursuant to this section shall be considered payments made upon demand and may not be considered voluntary payments.

(9) Payments from a surety company or proceeds from a certificate of deposit shall be paid first to the producer or the producer's agent or representative in the amount of the producer's claims in full if such proceeds are sufficient for such purpose and, if not, then in pro rata shares to such producer or producer's agent or representative. If additional proceeds exist in the hands of the department after all claims of a producer and a producer's agent or representative have been paid in full, the balance of such proceeds shall be paid to claimants who are licensed dealers in agricultural products, either in whole or in pro rata portion, as the aggregate of their claims may bear to the amount of such additional proceeds.

(10) Nothing in this section may be construed as relieving a surety company from responsibility for payment on properly established complaints against dealers involved in a federal bankruptcy proceeding and against whom the department is prohibited from entering an order.

(11) Upon the failure of a surety company to comply with a demand for payment of the proceeds on a bond for a dealer in agricultural products, a complainant who is entitled to such proceeds, in total or in part, may, within a reasonable time, file in the circuit court a petition or complaint setting forth the administrative proceeding before the department and ask for final order of the court directing the surety company to pay the bond proceeds to the department for distribution to the complainants. If in such suit the complainant is successful and the court affirms the demand of the department for payment, the complainant shall be awarded all court costs incurred therein and also a reasonable attorney's fee to be fixed and collected as part of the costs of the suit. In lieu of such suit, the department may enforce its final agency action in the manner provided in s. 120.69.

(12) Notwithstanding any provision of law to the contrary, the Commissioner of Agriculture or the commissioner's authorized designee may act as trustee on any bond or other form of security posted with the United States Department of Agriculture in compliance with the federal Packers and Stockyards Act. The commissioner may enter into agreements with the United States Department of Agriculture as necessary to carry out the purposes of the Packers and Stockyards Act.

West's F.S.A. § 604.22
604.22. Dealers to keep records; contents

- (1)
- (a) Each licensee, while acting as agent for a producer, shall make and preserve for at least 1 year a record of each transaction, specifying the name and address of the producer for whom she or he acts as agent; the date of receipt; the kind, quality, and quantity of agricultural products received; the name and address of the purchaser of each package of agricultural products; the price for which each package was sold; the amount of any additional charges necessary to effectuate the sale; the amount and explanation of any adjustments given; and the net amount due from each purchaser.
 - (b) An account of sales shall be furnished to each producer within 48 hours after the sale of such agricultural products unless otherwise agreed to in a written contract or verifiable oral agreement. Such account of sales shall clearly show the sale price of each lot of agricultural products sold; all adjustments to the original price, along with an explanation of such adjustments; and an itemized showing of all marketing costs deducted by the licensee, along with the net amount due the producer.
 - (c) The licensee shall make the payment to the producer within 5 days after the licensee's receipt of payment unless otherwise agreed to in a written contract or verifiable oral agreement.
- (2)
- (a) Notwithstanding s. 604.16(2), (3), and (4), a person, partnership, corporation, or other business entity, except a person described in s. 604.16(1), who possesses and offers for sale agricultural products is required to possess and display, upon the request of a department representative or state, county, or local law enforcement officer, an invoice, bill of sale, manifest, or other written document showing the date of sale, the name and address of the seller, and the kind and quantity of products for all such agricultural products.
 - (b) A person who violates this section is subject to s. 604.30(2) and (3).

West's F.S.A. § 604.23
604.23. Examination of records, sales, accounts, books, and other documents

The department shall have power to investigate, upon complaint of any interested person or upon its own initiative, the record of any dealer in agricultural products or any transaction involving the solicitation, receipt, sale or attempted sale of agricultural products, the failure to make proper and true accounts and settlements at prompt and regular intervals, the making of false statements as to condition, quality or quantity of goods received or while in storage, the making of false statements as to market conditions with intent to deceive, or the failure to make payment for goods received, or other alleged injurious transactions. For such purposes the department or its agents may examine, at the place or places of business of the dealer in agricultural products, the ledgers, books of accounts, memoranda, and other documents which relate to the transaction involved, and may take testimony thereon under oath.