

The National Agricultural
Law Center



University of Arkansas • Division of Agriculture

An Agricultural Law Research Project

Requirements for Grain Dealers

State of Illinois

Failure and Liquidation

www.NationalAgLawCenter.org



Requirements for Grain Dealers

STATE OF ILLINOIS

Current through P.A. 98-925 of the 2014 Reg. Sess.

240 ILCS 40/20-5 **40/20-5. Failure**

Upon the failure of a licensee, the Director has all powers as Trustee for the benefit of claimants as established under this Code, including, but not limited to, the power to do the following:

- (a) Seize or otherwise gain possession or control of grain assets (except the Department may not seize or otherwise gain possession or control of any equity asset on which there is a valid security interest or other lien without the prior, written permission of the secured party or lien holder), equity assets, and collateral and enforce the lien set forth in Section 20-10.
- (b) Protect the grain assets, equity assets (to the extent the Department has received the written permission of any secured party or lien holder to take possession and control of the equity asset), and collateral of or relating to a failed licensee in the possession or under the control of the Department for the benefit of claimants, secured parties, and lien holders.
- (c) Liquidate and collect upon all grain assets, equity assets (except the Department may not liquidate and collect upon any equity asset on which there is a valid security interest or other lien without the prior, written permission of the secured party or the lien holder), collateral and guarantees posted with the Department of or relating to a failed licensee, and deposit the proceeds into the Trust Account.
- (d) Establish accounts in federally insured financial institutions and hold all moneys received as trustee.
- (e) Request the transfer of moneys from the Fund to the Trust Account for the purpose of payment to claimants in accordance with Section 25-10.
- (f) Disburse the funds in the Trust Account in accordance with this Code.

240 ILCS 40/20-10 **40/20-10. Lien on grain assets and equity assets**

(a) A statutory lien shall be imposed on all grain assets and equity assets in favor of and to secure payment of obligations of the licensee to:

- (1) A person, including, without limitation, a lender:
 - (A) who possesses warehouse receipts issued from an Illinois warehouse location covering grain owned or stored by a warehouseman;
 - (B) who has other written evidence of a storage obligation of a warehouseman issued from an Illinois warehouse location in favor of the holder, including, but not limited to, scale tickets, settlement sheets, and ledger cards; or
 - (C) who has loaned money to a warehouseman and was to receive a warehouse receipt

from an Illinois location as security for that loan, who surrendered warehouse receipts as a part of a grain sale at an Illinois location, or who delivered grain out of storage with the warehouseman as a part of a grain sale at an Illinois location and:

(i) the grain dealer or warehouseman experienced a failure within 21 days thereafter, a warehouse receipt was not issued, and payment in full was not made; or

(ii) written notice was given by the person to the Department within 21 days thereafter stating that a warehouse receipt was not issued and payment in full was not made.

(2) A producer who possesses evidence of the sale at an Illinois location of grain delivered to that failed grain dealer, or its designee, and who was not paid in full.

This statutory lien arises, attaches, and is perfected at the date of delivery of grain, and is at that time deemed assigned by the operation of this Code to the Department.

(b) The lien on grain assets created under this Section shall be preferred and prior to any other lien, encumbrance, or security interest relating to those assets described in the definition of “grain assets” in Section 1-10, regardless of the time the other lien, encumbrance, or security interest attached or became perfected. The lien on equity assets created under this Section shall also be preferred and prior to any other lien, encumbrance, or security interest relating to “equity assets” as defined in Section 1-10. The lien on equity assets created under this Section, however, shall be subordinate and subject to any other lien, encumbrance, or security interest relating to “equity assets” to the extent a creditor has a valid security interest in or other valid lien on the property that was perfected prior to the date of failure of the licensee; provided, however, that a creditor is not deemed to have a valid security interest or other valid lien on property if (i) the property can be directly traced as being from the sale of grain by the licensee or failed licensee; (ii) the security interest was taken as additional collateral on account of an antecedent debt owed to the creditor; and (iii) the security interest or other lien was perfected (A) on or within 90 days before the date of failure of the licensee or (B) when the creditor is a related person, within one year of the date of failure of the licensee.

(c) To the extent any portion of this Code conflicts with any portion of the Uniform Commercial Code,¹ the provisions of this Code control.

(d) If an adversarial proceeding is commenced to recover “grain assets” or “equity assets” upon which a lien created under this Section is imposed and if the Department declines to take part in that adversarial proceeding, the Department, upon application to the Director by any claimant, shall assign to the claimant the statutory lien to permit the claimant to pursue the lien in the adversarial proceeding, but only if the assignment and adversarial proceeding will not delay the Department's liquidation and distribution of grain assets, equity assets, collateral, and guarantees, including proceeds thereof, to all claimants holding valid claims.

240 ILCS 40/20-15

40/20-15. Liquidation procedures

When a licensee experiences a failure, the Department has the authority to and shall:

(a) Immediately post notice at all locations of the failed licensee stating that the licensee has experienced a failure and that the license has been terminated and is no longer effective.

(b) Immediately take physical control and possession of the failed licensee's facility, including but not limited to all offices and grain storage facilities, books, records, and any other property necessary or desirable to liquidate grain assets and equity assets.

- (c) Give public notice and notify all known potential claimants by certified mail of the licensee's failure and the processes necessary to file grain claims with the Department as set forth in Section 25-5.
- (d) Perform an examination of the failed licensee.
- (e) Seize and take possession of, protect, liquidate, and collect upon all grain assets, collateral, and guarantees of or relating to the failed licensee and deposit the proceeds into the Trust Account. If at any time it appears, however, in the judgment of the Department that the costs of seizing and taking possession of, protecting, liquidating, and collecting upon any or all of the grain assets, collateral, and guarantees equals or exceeds the expected recovery to the Department, the Department may elect not to pursue seizing and taking possession of, protecting, liquidating, and collecting upon any or all of the assets.
- (f) Seize, take possession of, protect, liquidate, and collect upon the equity assets of the failed licensee and deposit the proceeds into the Trust account if the Department has first obtained the written consent of all applicable secured parties or lien holders, if any. If at any time it appears, however, in the judgment of the Department that the costs of seizing and taking possession of, protecting, liquidating, and collecting upon any or all of the equity assets equals or exceeds the expected recovery to the Department, the Department may elect not to pursue seizing and taking possession of, protecting, liquidating, and collecting upon any or all of the equity assets. If the Department does not otherwise pursue seizing and taking possession of, protecting, liquidating, and collecting upon any of the equity assets, the Department may bring or participate in any liquidation or collection proceedings involving the applicable secured parties or other interested party, if any, and shall have the rights and remedies provided by law, including the right to enforce its lien by any available judicial procedure. If an applicable secured party or lien holder does not consent to the Department seizing, taking possession of, liquidating, or collecting upon the equity assets, the secured party or lien holder shall have the rights and remedies provided by law or by agreement with the licensee or failed licensee, including the right to enforce its security interest or lien by any available judicial procedure.
- (g) Make available on demand to an applicable secured party or lien holder the equity asset, to the extent the Department seized or otherwise gained possession or control of the equity asset, but the secured party or lien holder does not consent to the Department liquidating and collecting upon the equity asset.

240 ILCS 40/20-20

40/20-20. Liquidation expenses; Asset Preservation Account

- (a) The Trustee shall pay from the Trust Account all reasonable expenses incurred by the trustee on or after the date of failure in reference to seizing, preserving, and liquidating the grain assets, equity assets, collateral, and guarantees of or relating to a failed licensee, including, but not limited to, the hiring of temporary field personnel, equipment rental, auction expenses, mandatory commodity check-offs, and clerical expenses.
- (b) Except as to claimants holding valid claims, any outstanding indebtedness of a failed licensee that has accrued before the date of failure shall not be paid by the Trustee and shall represent a separate cause of action of the creditor against the failed licensee.
- (c) The Trustee shall report all expenditures paid from the Trust Account to the Corporation at least annually.
- (d) To the extent assets are available under subsection (g) of Section 25-20 and upon presentation of documentation satisfactory to the Trustee, the Trustee shall transfer from the Trust Account to the

Regulatory Fund an amount not to exceed the expenses incurred by the Department in performance of its duties under Article 20 of this Code, in reference to the failed licensee.

(e) The Department shall establish and maintain an Asset Preservation Account as provided in Section 205-410 of the Department of Agriculture Law of the Civil Administrative Code of Illinois that shall contain a maximum of \$50,000. The funds in the Asset Preservation Account are to be used solely by the Trustee for the reasonable expenses incurred by the Department on or after the date of failure for preserving and liquidating grain assets, equity assets, collateral, and guarantees of or relating to a failed licensee, provided that the Department has made a determination that the benefit of preserving and liquidating the grain assets, equity assets, collateral, and guarantees exceeds the anticipated costs of the preservation and liquidation, and only to the extent that all liquid and available moneys in the Grain Indemnity Trust Account relating to the particular failure have been exhausted. The Asset Preservation Account shall be funded by the income earned on the assets in the Fund. The income must be transferred to the Asset Preservation Account on a monthly basis, within 10 business days after the end of each calendar month, and to the extent necessary to maintain the \$50,000 balance. The Trustee, or his or her designee, must file a report of all receipts by and disbursements from the Asset Preservation Account with the Board prior to each meeting of the Board.

240 ILCS 40/20-25

40/20-25. Refusal of licensee to allow liquidation

(a) If, after a failure, the failed licensee does not transfer control of the grain assets to the Trustee, the Director may, in conjunction with the authority granted in this Code and in Section 205-410 of the Department of Agriculture Law (20 ILCS 205/205-410), file a complaint and apply to a court of competent jurisdiction for a temporary restraining order, a preliminary injunction, or a permanent injunction to be entered without bond to carry out the provisions of this Code.

(b) If a party seeks relief from a court of competent jurisdiction that would enjoin, restrain, stay, or otherwise resist either (1) an administrative order of the Department that suspends, revokes, or denies renewal of a license under this Code or (2) an action brought by the Department relating to liquidation of a licensee, the court shall require the party requesting the relief to provide a bond as provided for in the Code of Civil Procedure.¹ The bond shall be in an amount adequate to assure that all producers and depositors will be paid while the licensee is operating following suspension, revocation, or denial of renewal of a license under the judicial relief for grain sold to or stored with the licensee. The bond shall be in a minimum amount sufficient to satisfy all existing grain obligations of the licensee for grain purchased, sold, or stored. In setting the amount of the bond, the court shall consider increasing the amount of the bond based upon a consideration of other factors, including, but not limited to, the total dollar amount of grain purchased annually by the licensee and the value of the storage obligations of the licensee.

240 ILCS 40/35-5

40/35-5. Regulatory Fund

(a) The Regulatory Fund is created as a trust fund in the State Treasury. The Regulatory Fund shall receive license, certificate, and extension fees under Sections 5-10, 5-15, and 5-20 and funds under subsection (g) of Section 25-20 and shall pay expenses as set forth in this Article 35.

(b) Any funds received by the Director under Sections 5-10, 5-15, and 5-20 and funds disbursed for

deposit to the Regulatory Fund under subsection (g) of Section 25-20 shall be deposited with the Treasurer as ex officio custodian and held separate and apart from any public money of this State, with interest accruing on moneys in the Regulatory Fund deposited into the Regulatory Fund. Disbursement from the Fund for expenses as set forth in this Article 35 shall be by voucher ordered by the Director, accompanied by documentation satisfactory to the Treasurer and the Comptroller supporting the payment warrant drawn by the Comptroller and countersigned by the Treasurer. Moneys in the Regulatory Fund shall not be subject to appropriation by the General Assembly but shall be subject to audit by the Auditor General. Interest earned on moneys deposited into the Regulatory Fund shall be deposited into the Regulatory Fund.

(c) Fees deposited into the Regulatory Fund under Sections 5-10, 5-15, and 5-20 shall be expended only for the following program expenses of the Department;

(1) Implementation and monitoring of programs of the Department solely under this Code, including an electronic warehouse receipt program.

(2) Employment or engagement of certified public accountants to assist in oversight and regulation of licensees in the course of an intermediate or advanced examination under Section 1-15.

(3) Training and education of examiners and other Department employees in reference to Department programs established to implement the Department's duties solely under the Code.

(d) Any expenses incurred by the Department in performance of its duties under Article 20 of the Code shall be reimbursed to the Department out of the net assets of a liquidation to the extent available under subsection (g) of Section 25-20 and shall be deposited into the Regulatory Fund and shall be expended solely for program expenses under the Code.