

UCC Revised Article 9: farmers affected by new deposit accounts provisions

Beginning in 2001, farmers seeking credit from their bank or input supplier should be aware that the legal documents they are asked to sign will probably include new provisions that reflect recent changes in the law. Recently, every state has enacted what is known as Revised Article 9 of the Uniform Commercial Code (UCC).¹ Article 9 is the portion of the UCC that provides the basic rules for valid, enforceable "secured transactions." In most states that have enacted Revised Article 9, the changes took effect on July 1, 2001.² In a few states the changes do not go into effect until a later date.³ Although the changes did not take effect until at least July 2001, farmers should be aware that creditors may have incorporated provisions into earlier security agreements and financing statements that reflect Revised Article 9's changes.⁴

Revised Article 9 was written as a "model" statute to be adopted as written by states, so that the rules would be the same across the country. Nonetheless, individual state legislatures are free to make changes to the model language or add or delete provisions. Please note that this article will refer to the model Revised Article 9 provisions.

Given the need for credit financing in agriculture, there are many changes within Revised Article 9 that may have an impact on farmers. The following is a brief summary of one of the key provisions of Revised Article 9, the ability of creditors to use deposit accounts as an original collateral source.

Revised Article 9 expands the types of property that can be used as collateral for a debt.⁵ The most significant change for farmers is that "deposit accounts" can now be used as an original collateral source for non-consumer transactions.⁶ To know what this change means, it is important to understand two terms: "deposit accounts" and "consumer transactions." Deposit accounts include checking, savings, and

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New York Court of Appeals decides farm worker housing case, reversing lower courts in favor of on-farm housing

New York's highest court, the Court of Appeals, recently decided the case of *Town of Lysander v. Hafner*, 2001 WL 1243564, 2001 N.Y. Slip Op. 07883 (October 18, 2001). The court upheld Mr. Hafner's right to choose to provide on-farm housing as well as the type of housing, mobile homes in this case. The court also ruled that the town's zoning ordinance is superseded by Agriculture and Markets Law (AML) §305-a and that the interpretation and administration of this key right-to-farm statute by New York's Commissioner of Agriculture and Markets is entitled to deference. The court quotes the Commissioner's finding that farmers often rely on mobile home housing for their farmworkers to accommodate the long work day, to provide seasonal housing needs, and to address the real shortage of rental housing in rural areas. The Commissioner also found that local government prohibitions or restrictions on the use of mobile homes can significantly impair the viability of farm operations.

Paul Hafner, Jr. operates a fruit and vegetable farm of approximately 800 acres, partially located in the Town of Lysander ("town"), Onondaga County. The farm is part of a county-adopted, state-certified, agricultural district. Farms located within such districts are entitled to certain benefits and protections, including protection against unreasonably restrictive comprehensive plans, local laws, ordinances, rules, or regulations pursuant to AML §305-a. In 1999, Mr. Hafner attempted to install several single-wide mobile homes for housing migrant workers on his farm. The town

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similar accounts and certain certificates of deposit that are held at banks and other financial institutions.⁷

Consumer transactions involve personal, family, or household debts and property. Farmers' credit arrangements may qualify as consumer transactions or non-consumer transactions, depending on the primary purpose of the debt and the type of collateral. For example, if a farmer purchases a lawnmower on credit primarily for use around the family home, this should be a consumer transaction. The same lawnmower purchased on credit but primarily for use in the farming operation would be a non-consumer transaction.⁸

A creditor's ability to take deposit accounts as original collateral in non-consumer transactions means that, in case of default, a farmer's creditors can seek payment from sources that in the past were partially protected from creditors. For example, Revised Article 9 provides that if a farmer signs a security agreement in exchange for credit to purchase a tractor and the security agreement in-

cludes as collateral both the tractor and the farmer's savings account, upon default the creditor may first attempt to take the funds in the farmer's savings account before going through the difficulties of taking possession of the tractor and reselling it in order to satisfy the debt.

If a creditor wants to use deposit accounts as security for repayment of a debt, the security agreement must clearly state that deposit accounts are included as collateral.⁹ This will most likely be done in the section of the security agreement that lists or defines collateral for the debt.¹⁰ Although it is possible to name (by type or account number) specific deposit accounts that are being given as security, standard security agreements will likely just state the general category of "deposit accounts" and will not specify individual accounts.¹¹ Using this general language means that funds held in any deposit accounts owned or acquired by the debtor would be available to the creditor as original collateral for the debt. One possible way for farmers to limit creditors' access to their deposit accounts would be to separate their household accounts from their business/farming accounts and to make sure that the security agreement only lists the business/farming deposit accounts and does not use the general category of "deposit accounts" without limitation.¹² This will almost certainly require making changes to the standard security agreement provided by the creditor.

It is important to remember that using deposit accounts as original collateral for a loan is not the only way that creditors can gain the right to funds in a debtor's accounts. Therefore, listing specific accounts or even removing deposit accounts from the types of collateral given in a security agreement will not provide absolute protection for the farmer's accounts. As was true under the old Article 9 provisions, creditors can generally claim funds in deposit accounts that are not listed as collateral if the funds are proceeds from the sale of security property or if state law otherwise gives the creditor a claim against the account.¹³ What is special about the new rule under Revised Article 9 is that creditors can have much easier access to a debtor's deposit accounts and generally need not get a court order to access the funds held in a debtor's accounts.

Even though the new rule makes it easier for creditors to access a debtor's accounts, there are still some requirements that must be met beyond signing the security agreement if a creditor is to gain access to the funds in the account.

To have access to funds in a deposit account that is covered by a security agreement, the creditor must also have "control" over the deposit account.¹⁴ Con-

trol has a special meaning for this purpose. There are three ways that a creditor can take control of a debtor's account. First, if the creditor is the bank where the deposit account is located, that creditor will have automatic control of the account.¹⁵ Second, a creditor will be considered to have control of a debtor's account if the creditor's name is also on the account.¹⁶ The third way that a creditor can take control of a debtor's account, and probably the most common way that this will occur, is for the debtor, the creditor, and the bank to enter into a "control agreement."¹⁷ Control agreements are discussed in the next section.

A control agreement is a document that authorizes a bank to follow a secured creditor's instructions concerning a debtor's account funds without further approval from the debtor.¹⁸ The control agreement may also restrict when or if the debtor can access any funds from the deposit account without the secured creditor's prior written consent. This could mean the debtor's assets are essentially frozen subject to the instructions of the secured creditor. For example, if a control agreement restricts the debtor's ability to draw funds from the account, any request for payments from the account made by the debtor, such as an automatic payment withdrawal or a check written on the account, may be denied or dishonored by the bank. If this happens, not only will the debtor be unable to make payments, but he or she may also be responsible for charges such as insufficient funds fees.

The bank where the deposit account is located cannot be required to enter a control agreement, even if the debtor as account holder requests it.¹⁹ Debtors, too, are not required by Revised Article 9 to sign a control agreement, though in practice the security agreements farmers sign may require cooperation with respect to obtaining control in the deposit accounts, including requiring them to sign control agreements.²⁰ For example, the Farm Service Agency's (FSA) Revised Article 9 Security Agreement states that by signing the agreement the farmer/debtor:²¹

agrees to execute any further documents, including additional security instruments on such real and personal property as [FSA] may require, and to take any further actions reasonably requested by [FSA] to evidence or perfect the security interest granted herein or to effectuate the rights granted to [FSA] herein.

Farmers who fail to follow FSA's instructions under the agreement, including executing documents that FSA needs to perfect its rights, will be considered in default.²²

A control agreement might require the bank to agree not to sign any other con-

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control agreements regarding the debtor's same deposit accounts.²³ If this requirement is included and the bank signs the control agreement, the deposit accounts covered by the agreement would likely not be available as collateral for any other secured creditor, even if the debtor signs multiple security agreements that all include the debtor's deposit accounts as collateral.

Regardless of what provisions are included in the control agreements, farmers should be extremely careful to understand the documents they sign. Control agreements could result in being unable to access one's checking and savings accounts without a creditor's prior written consent, causing bank fee charges, credit rating concerns, and perhaps even greater problems.

In certain circumstances, Revised Article 9 requires a creditor whose security agreement includes deposit accounts as collateral to terminate its control of the debtor's accounts.²⁴ If there is no outstanding debt under the security agreement and the creditor is not obligated to make further advances (as in a line-of-credit relationship), the debtor can make a formal demand that the creditor release its control of the account.²⁵ The debtor sends the creditor a signed letter requesting that the creditor terminate its control, and the creditor then has 10 days to terminate its control.²⁶ If the creditor's control is based on a control agreement, the creditor must terminate its control by sending the bank where the deposit account is located a statement releasing the bank of any further obligation to comply with the creditor's instructions regarding the account.²⁷ If the creditor's control is based on the creditor being named on the account, the creditor must terminate its control by either paying the debtor any remaining funds in the deposit account or transferring the remaining balance to a deposit account in the debtor's name.²⁸

¹ See Revised Article 9 Resource Center, <http://www.intercountyclearance.com/ra9/ra9.html> (last visited Sept. 17, 2001). See also, for example, 2000 Minn. Laws Ch. 399 and 2001 Minn. Laws Ch. 195. The text of the draft Revised Article 9 adopted by state legislatures is available on the Internet at: <http://www.law.upenn.edu/bll/ulc/uc9/textcomp.htm>. Citations to Revised Article 9 in these materials are to the general version put forth by legal committees. Individual states may have altered this general version.

² Rev. § 9-701.

³ See, 2001 Conn. Acts 132 (Reg. Sess.) (S.B. 1226) (effective 10/1/2001); 2001 Fla. Laws Ch. 198 (H.B. 579) (effective 1/1/2002); 2001 Miss. Laws 495 (S.B. 2626) (effective 1/1/2002); 2001 Ala. Acts 481 (effective 1/1/2002). See also, Farm Service Agency Notice FLP-215, "Additional Guidance on Uniform Commercial Code (UCC) Revisions" (July 26, 2001).

⁴ See, for example, John Yilek, Briggs & Morgan, "How To Comply With Revised Article 9 of the Uniform Com-

mercial Code" (March 2001), available at <http://www.briggs.com/FSLCS/articles/articles233.asp> (last visited June 1, 2001). The article advises that "[b]eginning immediately, the lender should obtain a new form of security agreement."

⁵ Rev. § 9-102, Official Comment 3(a).

⁶ Rev. § 9-109(d)(13); Rev. § 9-109, Official Comment 16.

⁷ Rev. § 9-102(a)(29).

⁸ Rev. § 9-102(a)(24). The comments to Revised Article 9 clarify that a credit arrangement secured by more than one type of collateral will be considered a consumer transaction if at least some of the collateral is for household use. See Rev. § 9-102, Official Comment 7.

⁹ Rev. § 9-109, Official Comment 16; see also, for example, Farm Service Agency Form FSA-0440-04A, "Security Agreement (Chattels and Crops)," Sec. II, Item 4, p. 5 (June 29, 2001) (hereinafter "FSA Security Agreement").

¹⁰ Steven O. Weise, "Materials on Revised Article 9" (August 2000), available at <http://www.hwm.com/news/articles/uc9.pdf> (last visited June 28, 2001).

¹¹ See, for example, FSA Security Agreement, Sec. II, Item 4, p. 5 (collateral to be listed in the security agreement includes "[a]ll accounts, deposit accounts, goods, supplies, supporting obligations, investment property, certificates of title, payment intangibles, and general intangibles, including, but not limited to the following....") (emphasis added). Although the "including, but not limited to" language in FSA's security agreement appears to clearly state that any specific listing of collateral would not limit FSA's interest in other accounts and rights, the instructions to FSA personnel that accompany the security agreement tell those personnel that the agreement will cover "only those accounts, contract rights and general intangibles which are listed by FSA. If security interest [sic] is to be taken on milk assignments, FSA deficiency payments, etc., and [sic] appropriate detailed description will be inserted." FSA Procedure Notice, Issue No. 119, Forms Manual Insert (FMI) page 2 (July 10, 2001). This conflict between FSA's interpretation of the agreement language for its personnel and the arguably clear language of the agreement itself is likely to cause problems for debtors. In order to ensure that a specific deposit account or other property is *not* given as security under this language, debtors should insist that the agreement explicitly state an exclusion under Item 4, such as "except account number ##### at Community Bank."

¹² Bruce A. Madell, *From Property to Contract and Back: An Examination of Deposit Accounts and Revised Article 9*, 74 Chi.-Kent. L. Rev. 963, 978 (1999).

¹³ Rev. § 9-315.

¹⁴ Rev. § 9-314.

¹⁵ Rev. § 9-104(a)(1); Rev. § 9-104, Official Comment 3.

¹⁶ Rev. § 9-104(a)(3); Rev. § 9-104, Official Comment 3.

¹⁷ Rev. § 9-104(a)(2).

¹⁸ Rev. § 9-104(a)(2); Rev. § 9-104, Official Comment 3.

¹⁹ Rev. § 9-342.

²⁰ Weise, footnote 30, at 7-8.

²¹ FSA Security Agreement, Sec. III.H.

²² FSA Security Agreement, Sec. IV.B.

²³ A model control agreement drafted by Edwin O. Smith (a member of the Revised Article 9 Drafting Committee) requires the bank to "represent and warrant to Lender (the secured creditor) that you have not entered, and you covenant with Lender that you will not enter, into any agreement with any other person by which you are obligated to comply with instructions from such other person as to the disposition of funds from the Deposit Account or other dealings with any of the Deposit Account Collateral."

²⁴ Rev. § 9-208.

²⁵ Rev. § 9-208(a).

²⁶ Rev. § 9-208(b).

²⁷ Rev. § 9-208(b)(1).

²⁸ Rev. § 9-208(b)(2).

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disapproved his building permit application on grounds that the mobile homes did not comply with the town's Zoning Code, which required "all one-story single family dwellings" to have a minimum living area of 1,100 square feet. Mr. Hafner requested that the Department of Agriculture and Markets ("Department") review the town's Zoning Code for compliance with AML §305-a (1).

Following examination of the zoning provision, the Department notified the town that it has consistently viewed mobile homes for farmworker residences as protected "on-farm buildings" under AML §305-a(1) and that application of the town's Zoning Code appeared to unreasonably restrict farm operations. The town sought an injunction to prevent Mr. Hafner from using the mobile homes to house migrant workers and directing removal of the structures unless the necessary building permits were obtained. Mr. Hafner responded that the zoning code unreasonably restricted farm operations within the meaning of AML §305-a(1) and that the town failed to show that its restriction on mobile homes was necessary to protect the public health or safety. Mr. Hafner moved for summary judgment and submitted a letter from the Department, which concluded that the application of the zoning code was an unreasonable restriction on farm operations.

The supreme court denied Mr. Hafner's motion and granted summary judgment to the town. The appellate division affirmed for "reasons stated" by the lower court. As an amicus curiae, the New York Department of Agriculture and Markets submitted extensive briefs detailing the legislative history of the amendments to the definition of "farm operation," the Commissioner's long-standing protection of farmworker housing under AML §305-a and its predecessor statute, and the importance of on-farm housing for farmworkers. However, the supreme court ruling, which was affirmed by the appellate division,

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Cooperatives in the 21st century

By James B. Dean and Ryan M. Stern

The purpose of this discussion is to provide a summary overview of the cooperative form of organization and cooperative principles and to speculate about potential applications of cooperatives in future years with a focus on rural parts of the United States.

What is a cooperative?

"A cooperative is a user owned and democratically controlled business from which benefits are received in proportion to use." *Cooperatives—What They Are and How They Work*, p. 2 Colorado Cooperative Council, Englewood, CO, 1994. "These important and unique business organizations operate according to special principles setting them apart from profit-seeking, investor-oriented corporations familiar to most people. In structure, cooperative corporations are quite similar to the ordinary business corporation—they have shareholders, directors, management, capital, debts, and buyers and sellers. But in operation they are unique, and that uniqueness is defined by 'cooperative principles.'" Baarda, *Cooperative Principles and Statutes: Legal Descriptions of Unique Enterprises*, ACS Research Rep. No. 54 (Agricultural Cooperative Service, USDA, 1986).

The modern cooperative tradition is based on the efforts in 1844 of 28 persons, mostly weavers, in Rochdale, England, who organized a cooperative store to provide themselves with butter, flour, oatmeal, and sugar. Dean, Conway and Holum, *The New Colorado Cooperative Act: A Setting for a Business Structure*, 25 Colo. L. 4 (1996). From that meager beginning, the cooperative movement has expanded worldwide, with over 800 million people involved in cooperatives of one kind or another. "In the United States alone, 120 million people are members of 47,000 cooperatives." *Ibid.*

Cooperative principles

There have been many statements of cooperative principles from which the following statement can be distilled:

A cooperative is an autonomous and independent organization owned, financed and controlled by the persons who use it and which provides and distributes benefits to those persons based on the amount of their use while also seeking to provide education, training and information with a concern for community responsibility. Traditional cooperative principles have also been

stated in a four-part summary:

- Service at cost;
- Financial obligation and benefits proportional to use;
- Limited return on equity capital; and
- Democratic control.

Meyer, *Understanding Cooperatives*, Cooperative Information Report 45, Section 2 (Cooperative Services, Rural Development Administration, USDA, 1994), p. 2.

The concept of "service at cost" or "operating at cost" is meant to illustrate that a cooperative is not designed to make a profit for itself at the enterprise level. Unfortunately, this has led many persons to believe that cooperatives are "non-profit" organizations akin to nonprofit charitable enterprises. This is an incorrect characterization. "The purpose of a user-owned cooperative business is to provide economic benefits to its members rather than to generate a return on investment." Meyer, *Understanding Cooperatives*, Cooperative Information Report 45, Section 1 (Cooperative Services, Rural Development Administration, USDA, 1994), p. 3. In a typical nonprofit organization, all earnings must be retained in the organization, and, if the organization is dissolved, its assets usually must be transferred to another nonprofit. In a cooperative, any earnings at the entity level are returned to the patrons of the cooperative, based on their use of the cooperative, or are allocated among the patrons based on their use of the cooperative and retained by the cooperative as additional capital for the operation of the cooperative. See Frederick, *Do Yourself a Favor: JOIN a Cooperative*, Cooperative Information Report 54 (Rural Business-Cooperative Service, USDA, 1996), at 7-8.

Examples of cooperatives

Cooperatives exist in agriculture, housing, insurance, banking, health care, retail sales, and numerous other areas. Some commonly known food products bearing the names of Sunkist, Ocean Spray, and Blue Diamond are produced and distributed by cooperative organizations. Owners of Ace, Our Own, and True Value hardware stores are members of cooperatives. Some owners of fast food franchises purchase their supplies through purchasing cooperatives. Mutual insurance companies and credit unions are cooperatives. Nonprofit and governmental organizations in Eagle County, Colorado, organized the Eagle Valley Family Center on a cooperative basis in 1995 to seek ways to provide mutual support in addressing health and

human services needs and programs in the county. Southard, *The Rural Heartbeat—Health Network Enhances Services in Mountain Community*, 63 Rural Cooperatives No. 3 (Rural Business-Cooperative Service, USDA, May/June 1996), 32. In Minnesota, North Dakota, and Wisconsin, over 50 new cooperative ventures had been developed by 1995 by agricultural producers to seek to obtain for themselves a portion of the value normally added by others to agricultural products at various stages of processing in the food distribution chain. Johnson, *Surfing the New-Wave Cooperatives*, 62 Farmer Cooperatives No. 10 (Agricultural Cooperative Service, USDA, Oct. 1995), 62.

"Although there are other types, cooperatives are generally considered to fall into three categories: (1) a marketing cooperative, in which members join together to market products produced or created by them; (2) a supply or purchasing cooperative, in which the members join together to acquire various goods and services for themselves; and (3) a worker-owned cooperative in which the workers own the business and thereby provide jobs and income for themselves." Dean, Holum and Conway, *supra*, 4.

Cooperative philosophy and principles

In 1995, after 150 years of cooperative history and development, the International Cooperative Alliance, composed of representatives from all over the world, reviewed and restated cooperative principles. The seven principles contained in the statement can be synthesized into the brief statements mentioned earlier.

If one examines cooperative principles closely, it becomes readily apparent that a cooperative is not simply another form of business organization. The principles on which a cooperative is founded, substantial portions of its organizational structure, and its method of operations are based on a philosophy that differs substantially from every other form of business organization. Although other forms of business organization can be adapted to a cooperative philosophy, the cooperative organization itself is something different. The cooperative has a user orientation. "The user orientation of a cooperative creates different priorities than an investor-owned firm." Dean and Frederick, *Business Cooperatives: Characteristics, Opportunities and Legal Foundations*, 22 Colo. L. 953 (1993).

As stated previously, other organizations, such as corporations, limited liability companies, and partnerships, are usually organized with a profit motive in mind at the entity level. The cooperative

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on the other hand is designed to operate "at cost" at the entity level and is used to enhance the economic rewards to its members at their level. The cooperative is intended to provide the services to its members "at cost" and not to provide economic returns through dividends or other forms of distributions to those who have invested in it.

The cooperative principle of "operation at cost" can be misinterpreted. As any good business person will say, you cannot start a year and make everything come out by the end of the year with revenues exactly matching expenditures. While a cooperative may find itself in a position to provide goods or services at a lower cost during the year than some other businesses, as with any business a cooperative must have operating capital and must make a sufficient margin on goods or services it provides so it will not be in a loss position. To bring operations to a "cost" basis at the end of the year, a cooperative will frequently take its excess net margins (profits in non-cooperative business language) and allocate them among the cooperative's members on the basis of the use made of the cooperative by the members during the year. While the amounts allocated to members are frequently called "patronage dividends," they do not bear a resemblance to dividends declared by corporations.

In most cooperatives, substantial portions of the patronage dividends allocated among the members are retained by the cooperative as additional equity capital. This represents part of the principle that financial obligations and benefits in a cooperative are to be proportional to the use made of the cooperative by its members. A cooperative member is expected to provide capital to the cooperative to support the amount of services that a cooperative provides to the particular member. This has been accomplished in many cooperatives by building a member's equity account in the cooperative through allocating to the member a share of the cooperative's net margins at the end of the year based on the amount of business the member did with the cooperative during the year compared to the total business done by all members in the cooperative, but then retaining substantial portions of the amounts allocated in the equity capital account of the member on the books of the cooperative. The retained amounts are called by various names, including "capital credits," "retained patronage," and "retained patronage dividends."

There are other ways in which members can provide capital to support the use of the cooperative by the members. In many of the so-called "new wave" or "value added" cooperatives, the members pay substantial amounts as equity contributions up front to support expected

capital expenditures and operating capital of the cooperatives. In other cooperatives, the members actually buy the right to use the cooperative. For example, in sugarbeet cooperatives, members pay the cooperative an amount based on acreage from which the members wish to produce sugarbeets to be delivered to the cooperative for processing. Other cooperatives use what is known as a "per unit retain" to raise capital. In this technique (generally applicable in marketing cooperatives), when the cooperative pays the purchase price for products or commodities marketed for the members, it deducts and retains an amount per unit of product or commodity marketed and credits amounts retained to the members' equity accounts in the cooperative.

In whichever way a cooperative derives its equity from its members for the purpose of providing the capital necessary to service the needs of the members, the ultimate effect is for the members to provide the equity in proportion to the amounts of the services of the cooperative provided to the respective members. Thus, the financial responsibilities are proportionate to the use made by the members, and the benefits they obtain are supported by the proportionate financial responsibilities.

This is unlike other business organizations where financial returns are based on amounts invested regardless of whether the organization provides any services to the investor whatsoever. In other business organizations, the objective, as has been stated previously, is usually to make a return on investment. Limited return on equity capital is one of the cooperative principles. While a cooperative may provide some dividend right or interest on equity capital invested in it, this principle is so fundamental that many state laws under which cooperatives are organized place a limit on amounts that can be returned on cooperative equity capital. This is also reflected in federal and state statutes, which may provide benefits to organizations that operate on a cooperative basis, such as the Internal Revenue Code, the federal Capper-Volstead Act, and Section 6 of the federal Clayton Act with respect to providing a limited exemption from anti-trust laws for certain types of agricultural cooperatives, and the Federal Farm Credit Act.

One can see that within a cooperative, the mind-set is on providing services to those persons who provide the capital to the cooperative and to do it in a way that will enable the persons to accomplish something they cannot accomplish for themselves. The focus is on serving needs and objectives of the owners and not those of third parties. This is a foreign concept to many organizations. To determine what the needs and objectives of the

owners are, a cooperative is operated on a democratic basis. While they may appear to be similar to corporations in structure, within a cooperative, once again, it is the persons being served who vote on what the cooperative is to accomplish, and in most cooperatives each member has one and only one vote irrespective of the use made of the cooperative or the amount of equity invested in the cooperative. While most cooperatives have boards of directors as with corporations, those boards are representatives of the persons being served, not of investors whose goal is to achieve a return on their investment in the organization.

The cooperative is indeed a powerful concept once its philosophical base is understood. Cooperatives arose in the United States largely out of the need of farmers to combat large agricultural marketing and supply companies at the end of the nineteenth and early twentieth centuries. It provided a means for small farmers to band together to obtain fair prices for their commodities and to obtain supplies at reasonable prices. Housing cooperatives were formed to enable persons to seek housing at lower prices than were otherwise available in the market place. Cooperatives such as the nationwide hardware cooperatives were founded to provide services to individual hardware stores and provide inventories at prices that they could not otherwise achieve.

The 21st century

The cooperative form of business can and should have a significant role in the 21st century. The opportunities are boundless. Will cooperative principles withstand the challenges that they will meet in the upcoming century? There is no reason to believe they cannot. On the other hand, it may be appropriate to reexamine the principles and their application in the years ahead. This was what the International Co-operative Alliance endeavored to do when it developed the Statement on Cooperative Identity. It may not have gone far enough.

Today many new cooperatives, such as the so-called "new wave" cooperatives do not embrace open membership. They frequently seek a set number of members at which time membership in the cooperative is closed. This approach is necessary and desirable in certain types of cooperative operations, especially those that will have limited facilities that can be made available to their members.

One member, one vote control by members may need to give way to more use of limited weighted voting based on patronage as has begun to emerge in limited ways in the last three decades.

It may be possible for members to provide all the equity investments needed

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by some cooperatives. Cooperatives may need to find ways to embrace the use of investor capital, which may require them to subordinate member equities in order to provide a meaningful return on investments made by third parties.

It may become more desirable for cooperatives to join with other organizations to accomplish their purposes. This may require cooperatives to give up more autonomy and independence than they have had to do in the past. They may find themselves in more fifty-fifty joint ventures than have previously been acceptable to cooperatives.

Greater emphasis on dissemination to the public of information regarding cooperatives may become more necessary, thereby expanding on the historic application of this principle if cooperatives are to retain their favored position under many federal and state statutes. Some agriculturally-oriented universities have virtually abandoned instruction regarding cooperatives. The cooperative community may need to find ways to develop supplemental educational programs so the cooperative story can be told to more persons.

In recent decades, many cooperatives have tended to isolate themselves into groups within the same industry. Greater efforts need to be made to encourage cooperatives of all types to band together into regional alliances for mutual support, advice, and dynamics within the general community.

Cooperatives have always been supposed to have a focus on the community around them, but in recent times, many cooperatives have lost sight of this purpose. For them to maintain community acceptance, they need to focus substantial energies on playing a role in and providing service to their communities.

New applications

These cooperatives that currently exist will face the challenges of a constantly changing business world, but with astute management, they can continue to address the needs for which they were created. Beyond these cooperatives, however, there are numerous opportunities to be explored.

As one views the next hundred years, there is no way one can know or even imagine the opportunities that could perhaps be addressed with a cooperative form of business by the end of the century. One can only look into the near future for possible applications. The examples of possibilities to be illustrated below are focused on rural parts of the United States but could have potential application, at least to some extent, in urban regions as well.

Agriculture

Cooperatives have been a prime marketer for and supplier of goods and services to farmers since the beginnings of the 20th century. Although agricultural cooperatives face new challenges today, there is no reason to believe they will not continue to provide their services to farmers into the foreseeable future, often utilizing new techniques and new programs. The value added cooperatives are an illustration of the directions taken by the agricultural cooperative movement. Existing cooperatives are likely to combine into larger, somewhat more regionalized, cooperatives in the future to control costs and access larger markets and sources of supplies. Cooperatives are likely to continue to play a significant role as the largest business in many rural communities.

Health care

In the health care field, there are many potential applications of the cooperative concept. There already exist cooperative medical insurance providers. As some insurance carriers, especially HMOs, withdraw from rural areas, communities and their residents in those areas can explore providing their own health insurance by banding together to provide their own mutual health insurance companies or programs.

With increasing costs of hospitals and medical equipment, communities can band together to support a single health care center on a cooperative basis.

If multiple hospitals exist, they can utilize the cooperative business structure for purchasing of equipment. For example, it was proposed in eastern Colorado that CAT scan equipment be placed on a specially constructed truck to be carried from hospital to hospital pursuant to a cooperative ownership and operational plan. Certainly it must be recognized that individual health care providers are concerned that their "business" will be undermined if others can have availability to their "special" equipment or services, but the alternative may be the demise of all health care facilities in various rural regions. For the sake of all, community leaders can encourage cooperative use of facilities among various communities.

The Eagle Valley Family Center mentioned earlier is an example of how health care and social services professionals can band together to share costs of facilities, supplies, and services for the elimination of duplication and for provision of more all-encompassing service coverage for residents in a geographic area.

Electronic services

In many rural areas, major utilities

are unwilling to provide high technology services, such as high speed communication lines. In one Colorado community, a wealthy family decided to run its own DSL line to its residence in the mountains. Because it was going to do so anyway, it has decided to explore sharing the line with neighbors. A cooperative organization is being explored as the possible "best fit" for the sharing to be accomplished. Subsequently, persons in other areas have learned of the effort and have requested that the person spearheading the first effort assist them in exploring development of cooperatives to provide DSL service to the other areas.

As more high technology services become available, many of them will be available or affordable in rural areas only if residents in the areas come together to provide for access to them for themselves. The cooperative business organization form is an ideal method for acquiring these services when they are otherwise unavailable or unaffordable through companies seeking a return on their investment.

Special products marketing

In many rural areas, there are persons who carry on small at-home or community businesses that manufacture specialized products or crafts. A survey of a half dozen communities may show that none of these businesses has sufficient capital to launch a significant marketing campaign. These businesses can explore creation of a cooperative to provide a catalogue that can be disseminated on a much wider scale than any individual business could do on its own. Distribution of the products could also be facilitated through a cooperative organization.

Housing

In many more remote areas, housing for workers is a significant concern. Costs of providing housing often place it beyond the reach of needed workers. Development of lower cost housing through cooperative ownership patterned after the successful housing cooperatives on the East coast is one potential solution to the problem of lower cost housing shortages in these areas.

Supplemental benefits

In addition to housing for workers, employers can form or sponsor cooperatives to provide various "fringe" benefits to employees to encourage them to locate and remain in rural areas. These can include cooperatives for purchasing of goods at favorable prices, perhaps leasing of motor vehicles, and group tickets or excursions for regional cultural events or the events themselves.

Cont. on p. 7

Coops/Cont. from p.6

A major trucking company developed a purchasing cooperative for independent contractors driving for it to prevent the continuing migration of drivers from firm to firm. Through the cooperative, independent drivers were enabled to access prices for tractors, tires, and other equipment and supplies at the trucking company's costs (plus one percent for administration). These prices represented sufficient savings to the independent drivers that migration to other firms was reduced substantially.

Day care centers

Even in the rural parts of the United States, it is more and more common for both parents in a family to work. Parents can create cooperatively owned day care centers to assure availability of qualified day care providers. In addition, it is possible for day care providers to develop "worker-owned" day care centers where the providers are the members of the cooperative and together can provide better day care programs than any of them could do operating alone.

Supplies and services

Many businesses in rural communities do not utilize supplies and services in sufficient quantities to obtain the best prices for them. It may be difficult to access some services at all. By joining together, they may be able to obtain better prices for basic supplies, such as paper products, or to provide sufficient funding to engage supplies of services or higher quality services for themselves. For example, it may be impossible for a business to afford a maintenance person for its equipment but three businesses could perhaps provide sufficient funding to hire a person dedicated to all three businesses.

Environmental and safety issues

As environmental and safety regulations are being enforced to a greater extent in rural areas, businesses and individual property owners can form cooperatives to provide to themselves as a group expertise in analysis and compliance programs that may be unavailable to any of them individually. This particular concept is being explored and implemented in various parts of the country today.

Business development areas

Efforts to attract businesses to rural areas could possibly be enhanced by community sponsored business parks, where businesses acquire interests in properties through cooperative ownership similar to cooperative housing, with amenities and upkeep provided by the cooperative organization.

These examples illustrate only a few of

the possibilities. In fact, cooperatives can be applied to virtually any aspect of life or economic endeavor when the efforts of a group can obtain benefits unavailable to members of the group as individuals.

One significant problem in applying the cooperative concept as a solution to problems is that individual participants often believe the cooperative will limit their individual freedom. While this risk certainly exists, a properly understood and operated cooperative should not produce this result to a significant extent. Rather, a cooperative organized and operated properly should enhance the welfare of each individual participant far more than any constraints that might exist by the individual's participation in the cooperative effort. This then becomes a matter of education, which is a necessary part of every cooperative endeavor, although it is too often forgotten.

Conclusion

After decades of government efforts to support and subsidize various elements

of rural regions, it may be that it is time for residents of rural areas to take matters into their own hands and seek to provide for themselves the goods, services, and programs that they desire.

The cooperative concept is a powerful one when properly applied. It can enable a group of persons to control its own destiny rather than react to circumstances that befall it. Cooperatives are not only a unique form of business organization; they are based on and utilize a philosophical concept that leads to empowerment for the participants.

It is not easy to organize a cooperative. A good deal of knowledge, expertise, education, and dedication is necessary. The result is often worth the effort.

Is there a place for cooperatives in the 21st century? Most certainly. More advisors need to learn about how to assist people in exploring, developing, and utilizing the cooperative form of activity. It may be the one certain means of assuring the survival of rural America.

Housing/Cont. from p.3

held that AML §305-a(1) did not "create an exemption from local zoning authorities or ordinances for all 'farm operations'" and that the statute did not provide any protection to "farm residential buildings," including mobile homes.

The court of appeals' decision highlights the right-to-farm protection provided by AML §305-a(1) and reflects much of the argument presented by the Department in its amicus brief. Judge Levine recognizes the legislative intent inherent in AML Article 25-AA (AML §§300-326) as he writes: "The Legislature enacted Article 25-AA of the Agriculture and Markets Law in 1971 for the stated purposes of protecting, conserving and encouraging 'the development and improvement of [this State's] agricultural lands' (L 1971, ch 479, §1). At that time and again in 1987 (L 1987, ch 774, §1), the Legislature specifically found that 'many of the agricultural lands in New York state are in jeopardy of being lost for any agricultural purposes' due to local land use regulations inhibiting farming, as well as various other deleterious side effects resulting from the extension of nonagricultural development into farm areas (Agriculture and Markets Law §300)." The court also recognized that the meaning of "farm operation" was clear: "As urged by defendants and the Commissioner, the literal language of the definition does not exclude 'farm residential buildings' from the protective reach of the statute. To the contrary, Agriculture and Markets Law §301(1) makes it plain that all buildings located 'on-farm' may be considered part of a 'farm operation' if they otherwise satisfy the requirements

of the statute..."

In addition to resolving the statutory construction issues, the court deferred to the Commissioner's position with respect to farmworker housing: "Where, as here, the 'interpretation of a statute or its application involves knowledge and understanding of underlying operational practices or entails an evaluation of factual data and inferences to be drawn therefrom, the courts regularly defer to the governmental agency charged with the responsibility for administration of the statute' [citations omitted]." The Court thereby helps to ensure that the Legislature's original intent in passing the Agricultural Districts Law, to protect, conserve and encourage "the development and improvement of agricultural lands," will be carried out by the Department, which has the expertise and experience to properly administer the law.

While the court's decision is limited to AML §305-a (1), it is the first time New York's highest court has written a substantive decision concerning the Agricultural Districts Law. The court's thoughtful opinion bodes well for farmers and the state's Right-to-Farm program as it provides lower courts with a concise and well-reasoned evaluation of a typical right-to-farm issue.

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