

by DANIEL Q. SCHIFFER

### General Overview of the Livestock Service Lien Law

California law provides a statutory scheme to assist creditors who provide livestock services to animals on behalf of livestock owners. The Livestock Service Lien Law (LSLL), codified as Civil Code, Section 3080, gives creditors preference over other creditors by granting the creditor a lien over livestock in the creditor's possession. A lien is defined as the first right to receive proceeds from the sale of property in order to satisfy a debt. It allows a creditor to stand ahead of all other secured and unsecured claims. Liens can be consensual or possessory.

A possessory lien requires that the creditor maintain possession of the livestock. If the creditor relinquishes possession, he loses his preferential rights over the livestock. Therefore, it is of paramount importance that the creditor maintain possession of the livestock until the bill is paid or the creditor exercises his rights under the LSLL.

A valid lien under the LSLL requires that there be a contract between the creditor and the owner (or the owner's authorized agent). Contracts can be oral or written but courts prefer written contracts. Farms can resolve many issues by having a good written contract and a policy that all boarders be required to enter into the contract prior to allowing the animal onto the farm.

The statute does not limit the creditor's lien only for the provision of board and care to the animal. 'Livestock Services' is defined as any and all grazing, feeding, boarding, general care, which includes animal health services, obtained or provided by the livestock servicer, or his employee, transportation or other services rendered by a person to livestock for the owner of livestock or for any person acting by or under the owner's authority. Therefore, the lien can arise in many instances and service providers should not release possession of the animal unless there is clearly no lien.

On the other hand, if a creditor refuses to release possession of an animal when he has no legal right to hold the property, he may have committed conversion of that property. If property is converted, the convertor is liable to the owner of the property for the fair market value of that animal at the time of the conversion. If the conversion is wilful the convertor may also be liable to the owner for punitive damages.

In most instances the creditor should consult with a qualified attorney to determine if he has a valid lien over the livestock. If the answer is affirmative then the creditor will be entitled to pursue certain remedies under the LSLL.

### The Retention of Livestock Remedy

One remedy that is granted by statute to a creditor who is owed monies for livestock services and who has a valid lien on the animal, is the offer to retain the livestock in sat-

isfaction of all, or a portion of, amounts owing for livestock services. The only entitlement to the creditor under this remedy is to take title to the property. He can not recover any other monies unless so reserved in the proposal to retain the livestock.

In order for a creditor to avail himself of this remedy he must send the owner of the animal a notice in which he states in clear language that if the owner does not object in writing within 21 days of receipt of the letter, the owner can forfeit title to the animal in favor of the creditor. If the owner releases the animal to the creditor, he will no longer have a debt for livestock services.

For the notice to be effective it must convey to the owner that he needs to either object or sign a release of the livestock within the 21-day period. It should be clear to the owner that in order to preserve his rights to his animal he must respond within the statutorily required period. It is suggested that the creditor use techniques such as bold type, italics, underlining, or enlarged lettering to emphasize the duty (to respond) that the letter is imposing on the owner.

It is also suggested that if at some later time the creditor is called upon to defend his title to the property, he be able to provide proof that the letter was received by the owner. Fax verification records, certified mail, FedEx, etc., provide available means to do this.

The risks of this remedy are that the owner will object to the offer of retention. In that event, the creditor is left with the alternative of selling the livestock and accounting to the owner for the proceeds. Failure to comply with the requirements of the remedy may be the basis for the owner or a subsequent purchaser to force the creditor, generally via a lawsuit, to justify that he has taken lawful title to the animal. The defense of this type of lawsuit can be very expensive and uncertain.

Given these risks, this remedy is probably best reserved for those instances where: (1) it is clear that the owner will cooperate and; (2) the value of the animal is so minimal that it is doubtful the animal is worth litigation. In those situations the retention remedy is a quick and economical solution to the creditor.

### The Release of Livestock Remedy

The second (and other non-judicial) remedy granted by the LSLL is for the owner to provide a written release of the livestock in full or partial satisfaction of the bill. This remedy presumes that the animal will be sold and the proceeds applied to the debt. If a creditor is going to avail himself of this remedy or the retention, he needs to construct a written release which meets the statutory requirements. Basi-



## Part I

Continued on next page

## THE LEGAL SIDE OF IT Continued

cally, the release must make certain disclosures to the owner concerning the owner's rights being released, whether or not the release is being given in partial or full satisfaction of the debt, as well as any rights reserved by either party.

The creditor should be careful to ascertain who actually holds title to the animal and whether or not a third person is claiming a security interest in the animal. The creditor must deal with all claimants to the animal in order to have clear title to transfer at a later time.

The requirement that the owner sign the release should be taken very literally. It is particularly useful to have the owner's signature notarized, especially if the creditor anticipates applying the purebred registry for transfer of the certificate on the animal. On the other hand, if the creditor feels that the signature can be authenticated by some other means, it is more likely that the owner will be willing to sign if his burden is removed. Therefore, if the release is in full satisfaction of the debt and a non-notarized signature will suffice, it is much more likely that the owner will deal with the problem by signing the document.

The release remedy is designed when the debtor is cooperative in dealing with the problem. In that instance the parties are able to work together to find a solution to both the bill and the future of the animal. It is suggested that whenever an owner tells the creditor to "sell my animal," a release should be signed. In this way there can be no questions in retrospect regarding the propriety of the sale.

### **Judicial Foreclosure Remedy (Judicial Order Method)**

The main remedy provided by the LSL is the judicial foreclosure and sale of the animal. The law allows for pre-judgment order of sale or the order of sale as a part of the monetary judgment at a trial of the case. This method provides assurances against recourse by the debtor or other claimants, so long as it meets judicial requirements. It is the method used in contested cases or where the self-help remedies are unavailable.

A civil lawsuit must be commenced in the local court. Since a small claims court only has power to award monetary damages, suit must be brought in the municipal or superior court (depending on the size of the debt). The claim should request both for money damages and an order to sell the animal.

If there are reasons to obtain a prejudgment sale, such as a perfect but limited market setting for the sale of an animal, the creditor can apply for a prejudgment order of sale. The creditor must show that he will likely prevail in his claim. All relevant papers must be then served on the parties to the case. The debtor can oppose the application or has the option of filing a bond for the release of the animal.

The amount of the bond is based on the value of the animal and not the board bill. This is very important because

if the board bill has far exceeded the value of the animal the bond will not equal the bill. Then, if the bond is utilized, the creditor may still have to seek recourse against the debtor's unsecured assets.

The LSL provides for the award of the creditor's attorney fees, court costs and lien enforcement costs. Since the case is not entitled to preference in the courts, the creditor will have to wait 30 days after service of process before he can request a judgment. If the case is contested then the creditor will have to wait his turn with all other civil cases before a trial will be held. In some cases, even if the case goes by default, it can take three or four months for a court to order the sale of the animal as part of the judgment. These delays should be taken into account in deciding whether or not to seek prejudgment relief.

Once a sale is ordered, the creditor can sell the animal. The sale can be public or private, but must be done in a commercially reasonable manner. This means that the creditor must do his best to get as much as he can for the livestock so that he can return any excess monies to the owner.

It is suggested that the creditor get an appraisal of the animal from a disinterested but qualified person. So long as the sales price is in line of the appraisal, any issues regarding the sale are essentially resolved. One alternative is to sell the animal at a public sale where the same type of horse is sold. For instance, if a yearling is ordered sold then the sale of that animal at a yearling sale would foreclose any question of commercial reasonability.

If the animal is ordered sold by public sale, the law requires, at a minimum, that a notice of sale be published in a local newspaper and that the debtor be notified of the sale in writing. The creditor is allowed to bid on the livestock and will often protect his judgment by bidding.

Purebred registries are very willing to accept a judicial order in order to transfer registration certificates. The Jockey Club requires an opinion letter from a licensed attorney that the sale was conducted in conformance with state law. Other duplicate application procedures also apply.

In order for the foreclosure remedy to be effective, the creditor must monitor the value of the animal, the size of the debt and the speed with which he can go through the foreclosure procedure. It is better to return some money to the debtor (if the sale realized more money than the debt), than to have to look to the debtor's personal assets in order to satisfy the deficiency left after the sale of the animal.

*This article is the first in a series that is being provided by CTBA Director Daniel Q. Schiffer. It is merely a general discussion of the subject matter included and is not intended to constitute legal advice.*

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