

WINE GRAPE SECURITY INTERESTS AND LIENS

A legal resource provided by Davis Wright Tremaine

Jesse D. Lyon

Partner, Davis Wright Tremaine 503.778.5268 jesselyon@dwt.com



2017

Davis Wright Tremaine LLP is a full service law firm providing services

THIS IS NOT LEGAL ADVICE. Please contact us for an electronic version with live links.
Contact Jesse D. Lyon of Davis Wright Tremaine LLP: jesselyon@dwt.com or 503.778.5268

WINE GRAPE SECURITY INTERESTS AND LIENS

Uniform Commercial Code (UCC)	State Statutory Grower Liens	Federal Statutory Grower Lien: Perishable Agricultural Commodities Act (PACA)
<p>Basics:</p> <ul style="list-style-type: none"> • Must have mutual written agreement about: <ul style="list-style-type: none"> ◦ Debt secured ◦ Collateral identified (wine inventory, A/R?) • Perfected by filing UCC Financing statement • Priority depends on timing of perfection for each category of collateral • Effective for 5 years 	<p>Washington:</p> <ul style="list-style-type: none"> • Processor's Lien (RCW 60.13.020) • Inventory and A/R • File within 20 days after default (use UCC-1, attach UCC 1Ad for additional facts) <ul style="list-style-type: none"> ◦ http://www.dol.wa.gov/forms/formsucc.html • Priority over other secured creditors • Expires after 12 months 	<p>PACA Basics:</p> <ul style="list-style-type: none"> • Produce Buyer and Seller Licensing (optional for grower-only sellers) • Fair Trading Regulations • Prompt Payment Presumption: 10 days; longer must in writing, signed by both parties (email confirming agreement likely OK). • Statutory Trust for Payment • http://www.ams.usda.gov/rules-regulations/paca
<p>Sample UCC Security Agreement Language:</p> <p><i>"Processor grants Grower a continuing security interest in Processor's inventory of Grapes and Products (including Work in Progress), now existing or later acquired, in order to secure full and timely payment as required by this Agreement."</i></p>	<p>Oregon:</p> <ul style="list-style-type: none"> • Agricultural Produce Lien (ORS 87.700 to ORS 87.736) • Inventory and proceeds • File APL-1 within 45 days after final due date <ul style="list-style-type: none"> ◦ http://sos.oregon.gov/business/Pages/ucc-forms.aspx • Priority IF other secured creditors are notified within 20 days • Expires in 225 days 	<p>PACA's Statutory Trust:</p> <ul style="list-style-type: none"> • Agreed payment terms not >30 days • Preserve rights by notice within 30 days or by invoice language (only if PACA licensed seller) • Trust beneficiaries have priority in trust assets: grapes, wine, and A/R
<p>Filing a UCC-1 Financing Statement in WA:</p> <ul style="list-style-type: none"> • http://www.dol.wa.gov/forms/formsucc.html • Key items to complete: <ul style="list-style-type: none"> • Debtor information • Secured-party information • Description of collateral 	<p>California:</p> <ul style="list-style-type: none"> • Producer's Lien (Food & Ag Code 55631) • Inventory and A/R • No filing required for priority • Expires in 2 years if no written contract 	<p>PACA Invoice Language:</p> <p><i>"The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by Section 5c of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499e(c)). The seller of these commodities retains a trust claim over these commodities, all inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received."</i></p>