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CIVIL CODE - CIV

DIVISION 3. OBLIGATIONS [1427 - 3273.69] (*Heading of Division 3 amended by Stats. 1988, Ch. 160, Sec. 14.*)

PART 4. OBLIGATIONS ARISING FROM PARTICULAR TRANSACTIONS [1738 - 3273.69] (*Part 4 enacted 1872.*)

TITLE 14. LIEN [2872 - 3081] (*Title 14 enacted 1872.*)

CHAPTER 6.7. Livestock Service Lien [3080 - 3080.22] (*Chapter 6.7 added by Stats. 1979, Ch. 600.*)

3080. As used in this chapter, the following definitions shall apply:

- (a) "Livestock" means any cattle, sheep, swine, goat, or horse, mule, or other equine.
- (b) "Livestock servicer" means any individual, corporation, partnership, joint venture, cooperative, association or any other organization or entity which provides livestock services.
- (c) "Livestock services" means 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.

(*Added by Stats. 1979, Ch. 600.*)

3080.01. A livestock servicer shall have a general lien upon the livestock in its possession to secure the performance of all obligations of the owner of the livestock to the livestock servicer for both of the following:

- (a) The provision of livestock services to the livestock in possession of the livestock servicer.
- (b) The provision of livestock services to other livestock for which livestock services were provided in connection with or as part of the same livestock service transaction, if such livestock services were provided within the immediately preceding 12 months prior to the date upon which the lien arose. The lien shall have priority over all other liens upon and security interests in the livestock, shall arise as the charges for livestock services become due, and shall be dependent upon possession. The lien shall secure the owner's contractual obligations to the lienholder for the provision of livestock services, the lienholder's reasonable charges for the provision of livestock services after the lien has arisen as set forth in Section 3080.02, and the lienholder's costs of lien enforcement, including attorney's fees.

(*Added by Stats. 1979, Ch. 600.*)

3080.02. In addition to any other rights and remedies provided by law, a lienholder may:

- (a) Retain possession of the livestock and charge the owner for the reasonable value of providing livestock services to the livestock until the owner's obligations secured by the lien have been satisfied.
- (b) Proceed to sell all or any portion of the livestock pursuant to Section 3080.16 if:
 - (1) A judicial order authorizing sale has been entered pursuant to Section 3080.06;
 - (2) A judgment authorizing sale has been entered in favor of the lienholder on the claim which gives rise to the lien; or
 - (3) The owner of the livestock has released, after the lien has arisen, its interest in the livestock in the form prescribed by Section 3080.20.
- (c) A lienholder may commence a legal action on its claim against the owner of the livestock or any other person indebted to the lienholder for services to the livestock and reduce the claim to judgment. When the lienholder has reduced the claim to judgment, any lien or levy or other form of enforcement which may be made upon the livestock by virtue of any execution based upon the judgment shall relate back to the attachment of and have the same priority as the livestock service lien. The lienholder may purchase

at a judicial sale held pursuant to the execution on the judgment and thereafter hold the livestock free of any liens upon or security interests in the livestock.

(Added by Stats. 1979, Ch. 600.)

3080.03. Upon the filing of the complaint, or at any time thereafter prior to judgment, the lienholder may apply to the court in which the action was commenced for an order authorizing sale of livestock.

(a) The application shall include all of the following:

- (1) A statement showing that the sale is sought pursuant to this chapter to enforce a livestock service lien;
- (2) A statement of the amount the lienholder seeks to recover from the defendant and the date that amount became due;
- (3) A statement setting forth the reasons why a sale should be held prior to judgment;
- (4) A description of the livestock to be sold and an estimate of the fair market value thereof; and
- (5) A statement of the manner in which the lienholder intends to sell the livestock. The statement shall include, but not be limited to, whether the sale will be public or private, the amount of proceeds expected from the sale, and, why the sale, if authorized, would conform to the standard of commercial reasonableness set forth in Section 3080.16.

(b) The application shall be supported by an affidavit or affidavits showing that on the facts presented therein the lienholder would be entitled to a judgment on the claim upon which the action is brought.

(c) A hearing shall be held in the court in which the lienholder has brought the action before an order authorizing sale is issued under this chapter. Except as provided in Section 3080.15, or as ordered by the court upon good cause shown, the defendant shall be served with a copy of all of the following at least 10 days prior to the date set for hearing:

- (1) A summons and complaint;
- (2) A notice of application and hearing; and
- (3) An application and all affidavits filed in support thereof.

(Added by Stats. 1979, Ch. 600.)

3080.04. The notice of application and hearing shall inform the defendant of all of the following:

- (a) The date, time and place of the hearing on the application;
- (b) That the order will issue if the court finds, after hearing, that the lienholder has established the probable validity of the claim and has satisfied the other requirements set forth in this chapter;
- (c) The hearing is not held for the purpose of determining the actual validity of the claim which determination will be made in other proceedings in the action and will not be affected by the findings made at the hearing on the application for the order;
- (d) If the order authorizing sale is issued, the lienholder may proceed to sell the livestock in the manner set forth in the order, and the sale proceeds will be deposited with the court pending judgment on the lienholder's claim;
- (e) If the defendant desires to oppose the issuance of the order, the defendant must file with the court and serve on the lienholder a notice of opposition and supporting affidavit as required by Section 3080.05 no later than three days prior to the date set for hearing;
- (f) At the hearing, the court may deny the lienholder's application if the defendant files an undertaking as set forth in Section 3080.11; and
- (g) The notice shall contain the following statement: "You may seek the advice of an attorney as to any matters concerning the lienholder's complaint and application. If an attorney is to assist you, he or she should be consulted promptly. You or your attorney or both of you may be present at the hearing."

(Added by Stats. 1979, Ch. 600.)

3080.05. (a) If a defendant desires to oppose the issuance of an order authorizing sale the defendant shall file and serve upon the lienholder a notice of opposition no later than three days prior to the date set for hearing. The notice shall:

- (1) State the grounds upon which the defendant opposes the order;
- (2) Be accompanied by an affidavit or affidavits supporting any factual issues raised;

(3) State whether the defendant is prepared to file an undertaking as provided in Section 3080.11; and

(4) If the defendant is prepared to file an undertaking, include an estimate of the amount of such undertaking as set forth in Section 3080.09 and the defendant's basis for the estimate.

(b) Except when the lienholder has made an ex parte application for an order as set forth in Section 3080.15, or for good cause shown, a defendant shall not be permitted to oppose the issuance of an order if it has failed to file a notice of opposition within the time prescribed.

(Added by Stats. 1979, Ch. 600.)

3080.06. (a) At the hearing, the court shall consider the showing made by the parties and shall issue an order authorizing the sale of the livestock if it finds all of the following:

(1) The claim upon which the lienholder's action is based is a claim giving rise to a lien upon which an order authorizing sale may be issued under this chapter;

(2) The lienholder has established the probable validity of the claim upon which the action is based;

(3) The lienholder has established the probable validity of the lien sought to be enforced by sale;

(4) The sale is necessary to prevent a possible decline in the value or condition of the livestock or that the sale should be held in the interest of equity;

(5) The sale is not sought for a purpose other than the recovery on the claim upon which the lien is based; and

(6) The sale, if conducted in the manner set forth in the application, would be conducted in a commercially reasonable manner.

(b) The order authorizing sale shall:

(1) Identify the livestock for which sale is authorized;

(2) Specify the manner of sale including the date, time, place, necessary publication or other notice; and

(3) Except as may be ordered pursuant to subdivision (c), direct the lienholder to deposit the proceeds of sale with the clerk of the court pending final judgment in the action.

(c) The court may in its discretion do either of the following:

(1) Authorize the lienholder to deduct and retain funds from the sale proceeds in an amount sufficient to compensate the lienholder for services provided to the livestock from the date that the lien arose until the date of sale.

(2) Determine the amount of sale proceeds reasonably necessary to satisfy the indebtedness secured by the livestock service lien and order any portion or all of the remaining sale proceeds distributed and applied as set forth in paragraph (3) of subdivision (c) of Section 3080.16.

The balance of sale proceeds, if any, remaining after any deductions authorized in this section shall be deposited with the clerk of the court pursuant to this section.

(Added by Stats. 1979, Ch. 600.)

3080.07. (a) After hearing, the court may issue an order denying the lienholder's application if it finds that:

(1) A sale is not necessary prior to judgment; and

(2) The defendant has filed an undertaking pursuant to Section 3080.11.

(b) If the defendant has filed an undertaking pursuant to Section 3080.11, the order shall direct the lienholder to assemble and make the livestock available to defendant, or to defendant's agent, at a specified date, time and place.

(Added by Stats. 1979, Ch. 600.)

3080.08. (a) The court's findings at the hearing shall be made upon the basis of the pleadings and other papers in the record. Upon cause shown, the court may receive and consider additional oral or documentary evidence or points and authorities at the hearing,

or it may continue the hearing to allow the production of such additional evidence or points and authorities.

(b) The court's findings at the hearing shall have no effect on the determination of any issues in the action other than issues relevant to the proceedings authorized by this chapter, nor shall they affect the rights of the defendant in any other action arising out of the same claim. The court's determinations at the hearing shall neither be admissible as evidence nor referred to at the trial of any such action.

(c) Neither the failure of the defendant to oppose the issuance of an order authorizing sale, nor the defendant's failure to rebut any evidence produced by the lienholder at the hearing held for the issuance of such order, shall constitute a waiver of any defense to the lienholder's claim in the action or in any other action or have any effect on the right of the defendant to produce or exclude evidence at the trial of such action.

(Added by Stats. 1979, Ch. 600.)

3080.09. (a) At any time after the lienholder has filed a complaint and claimed a lien under this chapter, or at any time after the owner of the livestock has commenced an action to recover possession of the livestock, the owner of the livestock may apply to the court in which the action was brought for an order for substitution of an undertaking which meets the requirements of Section 3080.11 for the livestock held by the lienholder.

(b) The application for such order shall be executed under oath and, unless included within a notice of opposition to sale as set forth in Section 3080.05, or except for good cause shown, shall be made upon noticed motion. Unless the parties otherwise agree, a hearing shall be held on the motion not less than five nor more than 10 days after service of notice of motion. The application shall contain all of the following:

- (1) A description of the livestock to be recovered;
- (2) An estimate and the basis for the estimate of the fair market value of the livestock;
- (3) A statement identifying and describing the sureties for the undertaking.

(Added by Stats. 1979, Ch. 600.)

3080.10. After hearing, the court may enter an order directing the lienholder to release all or a portion of the livestock to the owner, or to the owner's agent. The order shall be conditioned upon the filing by the owner of an undertaking as set forth in Section 3080.11, and shall include all of the following:

- (1) The amount of the undertaking required.
- (2) The basis for the court's finding as to the fair market value of the livestock.
- (3) A statement that the lienholder has the right to object to the undertaking pursuant to Section 995.910 of the Code of Civil Procedure.
- (4) A description of the livestock to be substituted.
- (5) A statement of the date, time, place and manner in which the lienholder is to turn over the livestock to the owner.

(Amended by Stats. 1982, Ch. 517, Sec. 77.)

3080.11. The undertaking to be substituted for livestock shall be by the owner to pay to the lienholder an amount equal to the sum of (1) the fair market value of the livestock sought to be recovered, and (2) the costs to be incurred by the lienholder in order to assemble and turn over the livestock.

(Amended by Stats. 1982, Ch. 517, Sec. 78.)

3080.15. (a) Except as otherwise provided by statute, or upon noticed hearing as provided in this chapter, no order authorizing sale or order for substitution of undertaking for livestock may issue unless it appears from facts shown by affidavit that great or irreparable injury would result to the party seeking the order if the issuance of the order were delayed until the matter could be heard upon noticed hearing.

(b) In addition to a specific statement of the facts showing great or irreparable injury, any application made under this section for either an order authorizing sale or an order substituting undertaking for livestock shall include the substantive requirements of an application made under Section 3080.03 or Section 3080.09, respectively.

(c) The court shall examine the ex parte application, supporting affidavits and other papers on record and may issue the order sought if it finds all of the following:

(1) The party seeking the order is entitled to the order under the substantive provisions of this chapter;

(2) The party seeking the order will suffer great and irreparable injury if the order is not issued; and

(3) If the ex parte application is made for an order authorizing sale, the court determines that the condition of the livestock will greatly deteriorate or the value of the livestock will greatly depreciate before an order authorizing sale could be obtained pursuant to noticed hearing.

(d) An order issued under this section shall contain such provisions as the court determines to be in the interests of justice and equity to the parties, taking into account the effects on all parties under the circumstances of the particular case. If an order authorizing sale issues under this section, the court may authorize the lienholder to take any action necessary to preserve the value of the livestock so long as the court has determined that such action would be commercially reasonable under the circumstances.

(e) Upon ex parte application of any party affected by an order issued under this section or, if the court so orders, after a noticed hearing, the court may modify or vacate the order if it determines that such action would be proper under the circumstances.

(Added by Stats. 1979, Ch. 600.)

3080.16. (a) Except as otherwise specified by the order authorizing sale or as agreed to by the parties after the lien has arisen, a sale of livestock under this chapter may be held in bulk or in parcels, at wholesale or retail, and at any time and place and on any terms, provided the lienholder acts in good faith and in a commercially reasonable manner. The livestock may be sold in its existing condition or following any commercially reasonable preparation or processing. The fact that a better price could have been obtained by a sale at a different time or in a different manner from that selected by the lienholder is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the lienholder either sells the livestock in the usual manner in any recognized market therefor or sells at the price current in such market at the time of the sale or, if it has otherwise sold in conformity with reasonable commercial sales practices for the type of livestock sold, it has sold in a commercially reasonable manner.

(b) Except as otherwise specified by order of the court, or as agreed to by all interested parties after the lien has arisen, the proceeds of sale shall be deposited with the clerk of the court in an interest-bearing account to abide the judgment in the action.

(c) Except as otherwise specified in the judgment in the action, the proceeds of sale shall be applied in the following order:

(1) For reasonable expenses incurred by the lienholder in enforcing the lien, including, but not limited to, the charges for livestock services from the date the lien arose to the date of sale; the costs of transporting and preparing the livestock for sale and of conducting the sale; and, the reasonable attorneys' fees and legal costs and expenses incurred by the lienholder;

(2) For satisfaction of the contractual indebtedness secured by the lien; and

(3) For satisfaction of indebtedness secured by any subordinate lien or security interest in the livestock if written notification or demand therefor is received by the court or the lienholder before the proceeds have been distributed. If requested by the lienholder, the holder of a subordinate lien or security interest must seasonably furnish reasonable proof to the court of its subordinate interest before the lienholder need comply with the demand.

(d) The lienholder must account to the owner of the livestock for any surplus and, unless otherwise provided in the judgment in the action, the owner shall be liable for any deficiency.

(Added by Stats. 1979, Ch. 600.)

3080.17. Except as otherwise agreed or specified by order of court, notice of sale shall be given as follows:

(a) A notice in writing of the date, time and place of sale shall be delivered personally or be deposited in the United States mail, postage prepaid, addressed to the owner of the livestock, at his last known address, and to any other person claiming a lien upon or security interest in the livestock, who had on file with the California Secretary of State on the date the lien arose a financing statement covering the livestock for which livestock services secured by the lien were provided at least five days before the date fixed for any public sale or before the day on or after which any private sale or other disposition is to be made.

(b) Notice of the time and place of a public sale shall also be given at least five days before the date of sale by publication once in a newspaper of general circulation published in the county in which the sale is to be held. If there is no such newspaper, notice shall be given by posting, for five days prior to sale, a notice of sale where the sale is to be conducted.

(Added by Stats. 1979, Ch. 600.)

3080.18. (a) Any sale of which notice is delivered or mailed and published as provided in this chapter and which is held as provided in this chapter is a public sale.

(b) Any public sale may be postponed from time to time by public announcement at the time and place last scheduled for sale.

(c) The lienholder may purchase the livestock at a public sale.

(Added by Stats. 1979, Ch. 600.)

3080.19. (a) A sale of livestock held pursuant to this chapter shall:

(1) Transfer to a purchaser for value all of the owner's rights in the livestock; and

(2) Discharge the lien under which the sale is made and any lien or security interest subordinate thereto.

(b) The purchaser shall take free of all such subordinate rights and interests even though the lienholder fails to comply with the requirements of this chapter or of any judicial proceeding if:

(1) In the case of a public sale, the purchaser has no knowledge of any defects in the sale and does not buy in collusion with the lienholder, other bidders or the person conducting the sale; or

(2) In any other case, the purchaser acts in good faith.

(Added by Stats. 1979, Ch. 600.)

3080.20. (a) The owner of livestock or any other person claiming an interest in livestock may release its interest in the livestock at any time after the lien has arisen. The release shall be in writing and dated when signed. A copy of the release shall be given to the person releasing the interest at the time the release is signed.

(b) The release shall contain all of the following information in simple, nontechnical language:

(1) A description of the livestock covered by the release and the releasing party's interest in the livestock;

(2) A statement of the amount of the lien to which the livestock is subject;

(3) A statement that the releasing party has a legal right to a hearing in court prior to any sale of the livestock to satisfy the lien;

(4) A statement by the releasing party that it is giving the lienholder permission to sell the livestock;

(5) A statement of the extent to which the releasing party gives up any interest it may have in the livestock or in the sale proceeds of the livestock; and,

(6) To the extent that the release is not given in full satisfaction of the lienholder's claim or claims against the releasing party, a statement by the releasing party that it is aware that the lienholder may still have a claim against it after the release has been executed.

(Added by Stats. 1979, Ch. 600.)

3080.21. At any time after a lien has arisen, the lienholder may propose to retain any portion or all of the livestock in satisfaction of any portion or all of the claim against the owner or other person indebted to the lienholder for livestock services. The proposal shall be made in writing to the owner and written notice thereof shall be given to any person entitled to receive notice under subdivision (a) of Section 3080.17. If, within 21 days after the notice was sent, the lienholder receives objection in writing from a person entitled to receive notification, the lienholder must proceed to sell the livestock and account for the proceeds pursuant to this chapter. In the absence of such written objection, the lienholder may retain the livestock, or so much thereof as proposed, in satisfaction of all or a portion of the claim against the owner and other person indebted to the lienholder for livestock services, upon the owner's and such other person's execution of a release conforming to Section 3080.20.

(Added by Stats. 1979, Ch. 600.)

3080.22. Any lien provided for in this chapter may be assigned by written instrument accompanied by delivery of possession of the livestock, subject to the lien, and the assignee may exercise the rights of a lienholder as provided in this chapter. Any lienholder assigning a lien as authorized herein shall at the time of assigning the lien give written notice of the assignment either by personal delivery or by registered or certified mail, to the legal owner and any other person entitled to receive notice under subdivision (a) of Section 3080.17, including the name and address of the person to whom the lien has been assigned.

(Added by Stats. 1979, Ch. 600.)

