



AGRICAP HIRES VICE-PRESIDENT/SENIOR ACCOUNT EXECUTIVE



Agricap Financial Corporation has named Sharon Goldberg, an expert in commercial lending and underwriting, vice-president and senior account

executive in charge of factoring operations.

Sharon has over 25 years of financial expertise, holding positions at large institutional powerhouses such as Bank of America, General Electric, Fidelity Bank (now a part of Wachovia Bank), and Fidelcor (now a part of CIT), as well as running her own consultancy.

At AgriCap, Sharon's main responsibilities include responding to client requests and proposing a course of action, monitoring economic and industry trends, and managing all aspects of assigned client portfolios.

In her spare time, Sharon enjoys traveling and NASCAR. Sharon graduated with a BS from the University of Pennsylvania's Wharton School and earned an MBA from Cal Poly Pomona.

What happened when? Read past issues of the *AgriCap Gazette* at www.agricap.com/news.

PACA PRIMER

(Second in a series.)

Due to the importance of PACA regulations to commerce in the produce industry, the following series should serve to provide a basic understanding of PACA and how it is commonly applied in produce transactions.

In this issue:

- [What Is the PACA Trust?](#)
- [How Can a Seller Obtain the Trust?](#)

What Is the PACA Trust?

If a seller complies with the requirements of the law, a trust relationship is created between the seller and his buyer or broker. Because of this trust relationship, the party receiving the merchandise is required to use all of the proceeds from sales of fruits and vegetables solely to pay the debt owed to the creditors who preserve their trust rights. In other words, it is prohibited to use such proceeds to pay other expenses such as employee salaries, personal expenses, business taxes, etc. It does not matter that the proceeds arise out of the sales of products of other sellers, the trust applies to a transaction until the debt is paid. If the buyer uses the proceeds for purposes that are not the payment of the claims of creditors who have preserved their trust rights, a breach of trust occurs. In such case, any owner of more than 10% of the stock of the buyer, as well as the responsible managers of the buyer, have civil liability for the debt to the creditor who preserved the trust rights under PACA. Effectively, they are guarantors of the debt. Therefore, the creditor can sue not only the business debtor, but can also sue other persons who have civil liability for the debt of the business.

In addition, when filing the collection suit it is possible to request the issuance of a temporary restraining order against the debtor which will prohibit the use of proceeds of sales of fruits and vegetable for purpose that are not payment of claims of creditors who have preserved their trust rights under PACA. In addition these creditors have a priority in case that the debtor declares bankruptcy.

PACA also provides procedures for resolving disputes outside the civil court system, and establishes a trust consisting of a buyer's produce-related assets. If a buyer becomes bankrupt, produce suppliers that have preserved their trust rights can recover money owed to them before trust assets are made available to general creditors.



The law requires most buyers and sellers to have a PACA license in order to trade in fruits and vegetables. A PACA

license, which costs \$550 a year, provides a means of enforcement because it can be suspended or revoked if a buyer or seller is found to commit unfair trading practices.

Unfair trading practices may include:

- rejecting without reasonable cause produce bought or contracted to be handled on consignment;
- failure to pay the agreed price of produce that complies with the contract terms or failure to pay promptly (within 10 days); and
- misbranding/mislabeling or misrepresentation of produce shipped in interstate commerce.

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PACA PRIMER (CONTINUED)

How Can a Seller Obtain the Trust Protections of PACA?

The creditor must prepare and deliver to his buyer or broker a notification that he is reserving his trust rights under PACA no more than 30 days after the end of the payment period for the merchandise. The payment periods are fixed in the PACA law unless there is a payment period agreed to in writing between the buyer and seller. However, if the written payment period is more than 30 days after the delivery of the merchandise, the trust rights of PACA are lost. Also, if the notification is delivered to the buyer or broker later than 30 days after the end of the payment period, PACA trust rights are lost.

Upcoming in this series:

- PACA Developments
- Does PACA Apply to the Exporter Who Sends Its Products to the United States?

- After Preserving Rights Under PACA, How Does a Supplier Collect an Overdue Account?
- If a Seller Does Not Preserve Trust Rights Under PACA, Can He Still Collect an Overdue Account?
- What Are the Myths About PACA?
- When There Is a Problem with Payment, a Produce Seller's Chances of Getting Paid Will Rise and Fall Depending On What Is Contained In His Invoice Or Contract
- What Is the PACA Statutory Trust ("Trust")?
- Advantages of the Trust to Sellers
- What the PACA Trust Isn't

Previously:

- What Is PACA?
- What Are the Protections of PACA?

Please direct any comments or questions about this series to Rick Jones at 213.542.5226 or rjones@agricap.com.



**THANKS FOR A GREAT
2007 PMA
FRESH SUMMIT!**

Comments? Questions?
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Contact Us at 213.542.5232 or
info@agricap.com.

The AgriCap Gazette would like to thank the contributions of Rick Jones and Peter Tam. It was through their time, energy, and effort that the AgriCap Gazette came to be published.



Season's Greetings...

*...from your business financing
and real estate lender*



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