

What can USDA do about live poultry dealers that do not pay for poultry?

USDA can notify the live poultry dealer of its responsibility to hold subject assets for the benefit of unpaid growers and cash sellers of poultry. USDA can penalize a live poultry dealer for failing to pay for poultry it purchased from a cash seller or obtained from a grower under a growing arrangement, since failure to pay for poultry is a violation of the P&S Act. Also, while these proceedings are in progress, USDA can ask a court to enjoin a live poultry dealer from future violations of the P&S Act.

However, USDA cannot furnish you with a lawyer to collect payment for you, or compel a live poultry dealer to pay you.

What can courts do about live poultry dealers that do not pay for poultry?

A district court of the United States (or a bankruptcy court if the live poultry dealer is in bankruptcy) can order a live poultry dealer to hold specific assets in trust for the benefit of unpaid growers or cash sellers of poultry who have given the required notices. The court can only order this upon receiving a written complaint. As an unpaid grower or cash seller of poultry, you may file the necessary written complaint with the court.

What should you do after a court issues a trust order against a live poultry dealer?

As an unpaid grower or cash seller of live poultry, you should petition the court to order payment from the assets being held in trust. You should file this petition even if you already notified the live poultry dealer and P&SP that the live poultry dealer failed to pay you. If you do not file a petition, the court may order that the assets be distributed to other unpaid growers or cash sellers who did file a petition.

Please direct comments or questions about this publication to:

United States Department of Agriculture
Grain Inspection, Packers and Stockyards Administration
1400 Independence Avenue S.W.
Washington DC 20250-3601
(202) 720-0219

www.gipsa.usda.gov

GIPSA Toll-Free HOTLINE
1-800-998-3447



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Grain Inspection,
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Live Poultry Growers' & Sellers' Rights

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What is the poultry trust?

The poultry trust is a statutory trust authorized in the Packers and Stockyards Act (P&S Act) to remedy the burden placed on public interests by live poultry dealers' inadequate financing arrangements. The trust protects certain live poultry growers and sellers by making their rights to specific assets of the live poultry dealer legally superior to the interests of any secured lenders to whom the live poultry dealer offered those assets as collateral for loans.

Whose rights does the poultry trust protect?

Live poultry growers and cash sellers of poultry. If you raise and care for live poultry for delivery, in accordance with another's instructions, for slaughter, or you sell live poultry on a cash basis for slaughter, your rights are protected by the poultry trust. A cash sale is one in which you do not expressly extend credit to the buyer. Therefore, the poultry trust does not protect you if you, as a cash seller of poultry, extend credit to a live poultry dealer.

The prompt payment provisions of the P&S Act permit poultry buyers and sellers to expressly agree, verbally or in writing, to payment terms other than those set out in the P&S Act. For example, you may give a live poultry dealer time to cover a check that you know is not good, or you may allow the live poultry dealer more time to make payment than permitted under the P&S Act. However, by agreeing to these terms, you may forfeit the benefit of the poultry trust, since your agreement may be considered an extension of credit rather than a cash sale.

Read documents carefully before signing. Credit agreements have sometimes been included in small print on receipts, scale tickets, and other documents. Therefore, you need to carefully read everything before you sign. Never sign anything you do not understand, or you could, unwittingly, forfeit the benefits of the poultry trust.

How do you preserve your rights if you do not get paid?

Notify the live poultry dealer and the nearest Packers and Stockyards Program (P&SP) regional office that the live poultry dealer failed to pay you for poultry. Your notice can be a letter, mailgram, or telegram, but it must be in writing. If you do not give the required written notice to both the live poultry dealer and P&SP, you will forfeit the benefits of the poultry trust.

How quickly must you act to preserve your rights?

30 calendar days after payment was due. You must notify the live poultry dealer and P&SP of your claim within the 30 calendar days immediately following the day the live poultry dealer owed you payment. If you delivered poultry under a growing arrangement, the live poultry dealer owes you payment by the close of the 15th day following the week in which the poultry is slaughtered. If you sold poultry on a cash basis, the live poultry dealer owes you payment by the close of the next business day following purchase.

15 business days after payment instrument is not honored. You must notify the live poultry dealer and P&SP of your claim within the 15 business days immediately following the day you received notice that the payment instrument was not honored. If the live poultry dealer gave you a payment instrument, you should properly present it for payment and receive notice that it is dishonored (for example, a bounced check), before you make this claim.

Do not delay in giving written notice of your claim, or you will forfeit the benefits of the poultry trust.

What information should you include in your poultry trust claim?

Include the name and contact information of the live poultry dealer, your name and contact information, the date of the transaction(s) in which the live poultry dealer failed to pay you, the date you received notice that one or more payment instruments from the live poultry dealer were dishonored (if applicable), the amount of money the live poultry dealer owes you, and any other information necessary to support your trust claim.

What is a live poultry dealer?

A live poultry dealer is someone who engages in the business of obtaining live poultry under a poultry growing arrangement, or by purchase, either for slaughter or for sale to another for slaughter.

Which live poultry dealers are subject to the poultry trust?

Live poultry dealers whose average annual purchases, sales or value of poultry produced under a growing arrangement exceed \$100,000 are subject to the statutory trust provisions of the P&S Act. If you cannot determine if a live poultry dealer is subject, contact the nearest P&SP regional office for assistance.

What assets of a live poultry dealer are subject to the poultry trust?

Poultry that a live poultry dealer bought in cash sales, poultry produced under growing arrangements, as well as inventories, receivables, and proceeds derived from that poultry are subject to the poultry trust. Other assets, such as plant equipment and buildings, are not subject to the poultry trust.