
LANDLORD'S LIEN

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LANDLORD'S LIEN

I. INTRODUCTION

area being investigated in this paper is the current existence and extent of the landlord's lien in Oklahoma. According to 42 O.S. 1981 §1 "A lien is a charge imposed upon specific property, by which it is made security for the performance of act act." Three possible sources of authority for such a lien by a landlord against a tenant for delinquent rent include: (1) common law possessory lien, 2) statutory lien, and (3) contractual lien. As will be explained in greater detail herein, there is no support for a common law possessory lien, there is a statutory lien but it only covers innkeeper or residential matters, and there is, if the parties agree, a contractual lien available for both residential and non-residential situations

II. COMMON LAW POSSESSORY LIEN

common law, which (in its most basic form) is the ancient unwritten law of England, (McCormack v. Oklahoma Publishing Company, Okl., 613 P.2d 737 (1980)), "as modified by constitutional and statutory law, judicial decisions and the conditions and wants of the people, shall remain in force in aid of the general Statutes of Oklahoma; but the rule of the common law, that statutes in derogation thereof, shall be strictly construed, shall not be applicable to any general statute of Oklahoma; but all such statutes shall be liberally construed to promote their object." (12 O.S. 1981 §2)

"A common-law lien depends upon an independent and exclusive possession of the property against which the lien is certain, since it is based directly upon the idea of possession, and apart from an actual seizure of property upon demised premises by the levy of a distress for rent in arrears whereby the landlord acquires in effect a lien on the tenant's property for past-due rent, a landlord by virtue of his position has no lien upon any property of his tenant as security for rent, in the absence of contract or statute. Thus a lien in favor of the landlord, as distinguished from his right to distrain, arises only from a statute creating such a lien, or from the agreement of the tenant giving a lien." (AmJur2d, Landlord and Tenant §675) (emphasis added)

"Except as provided by statute, a landlord's lien, so far as distress is concerned, can be acquired only by an actual levy under a distress proceeding made in conformity with the governing provisions of law and is not created by his mere right to ~~distrain~~. In other words, the common-law right of the landlord to distrain for overdue rent confers no lien until the right of distress has been exercised. While the right of distress is often referred to as a lien, it is only in the nature of security. The pledge, or quasi pledge, which the landlord is said to have is, at most, only a power to seize chattels found on the rented premises. These he can take into possession and hold until the rent is paid. So, it has been held that a statute authorizing a landlord in case of distress for rent to seize any

personal property of the tenant that may be found in the county where the tenant resides does not give the landlord a lien on such personal property before it is taken on a distress; such a provision merely extends the common law right to distrain which itself confers no lien. But while there is no specific lien except on the goods actually distrained under the landlord's warrant, all the goods on the demised premises are to be considered as being under a quasi pledge, which gives superiority to the specific lien established by the distraint." (AmJur2d, Landlord and Tenant §675)

"Distress" means "to distrain". To "distrain" means to seize and hold property as security for a debt. (Black's Law Dictionary)

To "levy" means to seize property under a writ of execution. (Black's Law Dictionary)

41 O.S. 1981 §27 provides:

When any person who shall be liable to pay rent (whether same be due or not, if it be due within one (1) year thereafter, and whether the same be payable in money or other things), intends to remove or is removing, or has, within thirty (30) days, removed his property, or his crops, or any part thereof, from the leased premises, the person to whom the rent is owing may commence an action; and upon making an affidavit, stating the amount of rent for which such person is liable, and one or more of the above facts, and executing an undertaking as in other cases, an attachment shall issue in the same manner and with the like effect as is provided by law in other actions.

Therefore, once an action for delinquent rent has been initiated, there is an abbreviated affidavit procedure available to use the

sheriff to seize and thereby prevent the removal of the tenant's personal property from the premises. This power keeps the tenant's assets available to satisfy the anticipated judgment

Under Oklahoma law, even in an "equitable proceeding trial court may not impose a lien merely from a sense of justice in a particular case." (Phoenix Mutual Life Insurance Company v. Hardin, Okl. 596 P.2d 888 (1979) at 890) But rather "A lien is created: 1. By contract of the parties; or 2. By operation of law." (42 O.S. 1981 §6) "Although lien laws will be liberally construed, courts cannot create a lien neither provided by nor created by contract." (Phoenix, supra at 890)

In conclusion, there is not a common law landlord's possessory lien in Oklahoma.

III. STATUTORY LIEN

A. GENERAL

As mentioned above, Oklahoma statutes provide: "A lien is created: 1. By contract of the parties; or 2. By operation of law." (42 O.S. 1981 §6)

B. RESIDENTIAL LANDLORD'S LIEN

As to residential matters, there is a statutory lien under 41 O.S. 1981 §§133, 134. The landlord's lien is restricted by 41 O.S. 1981 §§103 and 102(3)

Unless the context otherwise requires: ***
"Dwelling unit" means a structure, or that part of a structure, which is used as a home, residence or sleeping place by one or more persons. (41 O.S. 1981 §102(3))

A. Except as otherwise provided in this act, this act applies to, regulates and determinēs

rights, obligations and remedies under a rental agreement, wherever made, for a dwelling unit located within this state. B. Any agreement, whether written or oral, shall be unenforceable insofar as said agreement, or any provision thereof, conflicts with any provision of this act. (41 O.S. 1981 §103)

41 O.S. 1981 §133 provides:

A landlord shall have a lien upon that part of the property belonging to the tenant which has a reasonable relationship as nearly as practicable to the amount of the debt owed, which may be in a rental unit used by him at the time notice is given, for the proper charges owed by the tenant, and for the cost of enforcing the lien, with the right to possession of the property until the debt obligation is paid to the landlord. Provided, however, that such lien shall be secondary to the claim of any prior bona fide holder of a chattel mortgage or to the rights of a conditional seller of such property, other than the tenant.

For purposes of this section, property shall mean any baggage or other property belonging to the tenant which may be in the rental unit used by the tenant but which shall not include all tools, musical instruments or books used by the tenant in any trade or profession, all family portraits and pictures, all wearing apparel, any type of prosthetic or orthopedic appliance, hearing aid, glasses, false teeth, glass eyes, bedding, contraceptive devices, soap, tissues, washing machines, vaporizers, refrigerators, food, cooking and eating utensils, all other appliances personally used by the tenant for the protection of his health, or any baby bed or any other items used for the personal care of babies.

41 O.S. 1981 §134 provides:

A landlord lien may be enforced as any other general lien as provided in Section 91 of Title 42 of the Oklahoma Statutes.

The predecessor to this statute (41 O.S. 1973 Supp. §42) was challenged in Hitchcock v. Allison, Okl., 572 P.2d 982 (1977) as

constituting state action in the person of the landlord clothed in the statute's authority and, thereby, a violation of Fourteenth Amendment to the U.S. Constitution against a taking of property by the State. However, the Oklahoma Supreme Court unanimously held that "The situation between the landlord tenant, when the latter defaults on his rent and leaves effects on the premises, invites the State to establish rules governing the parties rights." (Hitchcock at 986) And the court finally found "that statute 41 O.S. 1973 Supp. §42] is constitutional when tested by the Fourteenth Amendment of United States Constitution as applied through 42 U.S.C. §1983" (Hitchcock at 986-987) 42 U.S.C. §983 provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

The repealed residential landlord's statute and the current residential landlord's statute have substantially the same language and, therefore, under Hitchcock the residential landlord statute is likely to be held constitutional.

The enforcement procedure relating to this current residential landlord's lien is as follows:

(a) Every person who, while lawfully in possession of an article of personal

property, renders any service to the owner thereof by furnishing material, labor or skill for the protection, improvement, safekeeping, towing, storage or carriage thereof, has a special lien thereon, dependent on possession, for the compensation, if any, which is due to him from the owner for such service.

(A) Said lien may be foreclosed by a sale of such personal property upon the notice and in the manner following: The notice shall contain:

(1) The names of the owner and any other party or parties who may claim any interest in said property.

(2) A description of the property to be sold.

(3) The nature of the work, labor or service performed, material furnished, and the date thereof.

(4) The time and place of sale.

(5) The name of the party, agent or attorney foreclosing such lien.

(B) Such notice shall be posted in three public places in the county where the property is to be sold at least ten (10) days before the time therein specified for such sale, and a copy of said notice shall be mailed to the owner and any other party or parties claiming any interest in said property if known, at their last known post office address, by registered mail on the day of posting. Party or parties who claim any interest in said property shall include owners of chattel mortgages and conditional sales contracts as shown by the records in the office of the county clerk in the county where the lien is foreclosed.

(C) The lineor or any other person may in good faith become a purchaser of the property sold.

(D) Proceedings for foreclosure under this act shall not be commenced until thirty (30) days after said lien has accrued.

(b) Any person who in induced by means of a check or other form of written order for immediate payment of money to deliver up possession of an article of personal property on which he has a special lien created by subsection (a) of this section, which check or other written order is dishonored, or is

not paid when presented, shall have a lien for the amount thereof upon said personal property if, within thirty (30) days from the date of dishonor of said check or other written order for payment of money, he files in the office of the county clerk of the county in which the property is situated a sworn statement that the check or other written order for immediate payment of money, copy thereof being attached, was received for labor, material or supplies for producing or repairing an article of personal property, that it was not paid, and that the uttering thereof constituted the means for inducing him, one possessed of a special lien created by subsection (a) of this section upon the described article of personal property, to deliver up the said article of personal property. The enforcement of said lien shall be within sixty (60) days after filing said lien in the manner provided by law for enforcing the lien of a security agreement and provided that the lien shall not affect the rights of innocent, intervening purchasers without notice. (42 O.S. 1981 §91)

However it is also assumed that judicial foreclosure of this lien and sale is permissible under judicial process. 41 O.S. §27 provides:

When any person who shall be liable to pay rent (whether the same be due or not, if it be due within one (1) year thereafter, and whether the same be payable in money or other things), intends to remove or is removing, or has, within thirty (30) days, removed his property, or his crops, or any part thereof, from the leased premises, the person to whom the rent is owing may commence an action; and upon making an affidavit, stating the amount of rent for which such person is liable, and one or more of the above facts, and executing an undertaking as in other cases, an attachment shall issue in the same manner and with the like effect as is provided by law in other actions.

For more information see the foreclosure and sale proceedings set out in the Contractual Lien chapter below

C. NON-RESIDENTIAL LANDLORD'S LIEN

While Oklahoma Statutes provide the landlord with a right of recovery for the reasonable value of the use of the premises this debt does not rise to the level of a lien on specific property. (23 O.S. 1981 §62) An innkeeper or keeper of a boarding house does have a statutory lien. 15 O.S. 1981 §501 provides:

An innkeeper or keeper of a boarding house is liable for all losses of, or injuries to, personal property placed by his guests or boarders under his care, unless occasioned by an irresistible superhuman cause, by a public enemy, by the negligence of the owner, or by the act of someone whom he brought into the inn or boarding house, and upon such property the innkeeper or keeper of a boarding house has a lien and a right of detention for the payment of such amount as may be due him for lodging, fare, boarding, or other necessities by such guest or boarder; and the said lien may be enforced by a sale of the property in the manner prescribed for the sale of pledged property.

It should also be noted that if a landlord takes charge of "found" property he becomes liable for its safekeeping and its return to its rightful owner if known. 15 O.S. 1981 §§511 to 518 provide:

§512. Finder must notify owner if known

If the finder of a thing knows or suspects who the owner is, he must, with reasonable diligence, give him notice of the finding, and if he fails to do so, he is liable in damages to the owner, and has no claim to any reward offered by him for the recovery of the thing, or to any compensation for his trouble or expenses.

§513. Claimant must prove ownership

The finder of a thing may, in good faith, before giving it up, require reasonable proof of ownership from any person claiming it. .

§514. Compensation and reward for service

The finder of a thing is entitled to compensation for all expenses necessarily incurred by him in its preservation, and for any other service necessarily performed by him about it, and to a reasonable reward for keeping it.

§515. Exoneration of finder from liability by storing with another

The finder of a thing may exonerate himself from liability at any time, by placing it on storage with any responsible person of good character, at a reasonable expense.

§516. Finder may sell, when

The finder of a thing may sell it, if it is a thing which is commonly the subject of sale, when the owner cannot with reasonable diligence be found; or, being found, refuses upon demand to pay the lawful charges of the finder, in the following cases:

1. When the thing is in danger of perishing, or losing the greater part of its value; or

2. When the lawful charges of the finder amount to two-thirds of its value.

§517. Manner of sale

A sale under the provisions of the last section must be made in the same manner as the sale of a thing pledged.

§518. Surrender of thing to finder

The owner of a thing found may exonerate himself from the claims of the finder by surrendering it to him in satisfaction thereof.

Therefore, in conclusion, except for the innkeeper's lien, there is no express statutory landlord's lien on non-residential property.

IV. CONTRACTUAL SECURITY INTEREST

A. GENERAL

The means for a landlord to acquire a lien, other than a statutory lien, is a contractual lien granted on specific

property. (42 O.S. 1981 §6) In Oklahoma such a contractual is usually expressly granted in the language of the lease whereby the lease agreement itself acts as a Security Agreement covering certain classes of the tenant's personal property located on the leased premises (e.g., furniture, equipment and fixtures)

The Oklahoma Uniform Commercial Code "U.C.C.") Article 9 applies to any transaction, regardless of its form, which is intended to create a security interest in personal property therefore, it governs granting, attachment, perfection enforcement of such a contractual security interest. 12 1981 §9-102) (See attachment E) The U.C.C. specifically excludes any "landlord's lien" from its coverage but it is generally understood among practicing attorneys that it is only statutory landlord's lien which is excluded.

B. GRANTING, ATTACHMENT AND PERFECTION

The procedure for granting a contractual lien in personal property is by entering into an agreement. This agreement ~~be evidenced~~ either by a written instrument, such as a security agreement, or by possession of the collateral. (12A O.S. 1981 §203)

A lease can act as a security agreement. (Harbour-Longmire Co. v. Reid, 124 Okl. 77, 254 P. 29 (1927); Wellbro Bldg. Co. v. McConnico, Okl., 421 P.2d 837 (1966) (See Attachment A)

"An agreement may be made to create a lien on property yet acquired ... or not yet in existence 42 O.S. 1981 §8; 12A O.S. 1981 §9-204(1 Therefore, personal property not

acquired or located on the premises can be impressed with the earlier agreed to lien once acquired and located on the premises pursuant to the terms of the lease agreement. However, such lien is subordinate to a purchase money mortgage if the purchase money mortgagee files within 10 days. (12A O.S. 1981 §9-301(2))

"A lien can be created by contract to take immediate effect as security for the performance of obligations not then in existence." (42 O.S. 1981 §9; 12A O.S. §9-204(3) Thus, while the rent or other payments may not be due from the tenant until some time after the execution of the lease agreement, the lien provided in the lease agreement can "take immediate effect". It should be noted that "Notwithstanding an agreement to the contrary, a lien or contract for a lien transfers no title to the property subject to the lien." (42 O.S. 1981 §10)

"Except as otherwise provided by this act [i.e., U.C.C. a security agreement is effective according to its terms between the parties, against purchasers of the collateral and against creditors." (12A O.S. 1981 §9-201

A security interest is not enforceable against the debtor or third parties and does not attach unless:

- a. The collateral is in the possession of the creditor, or the debtor signed a security agreement, and
 - b. Value has been given, and
 - c. The debtor has rights in the collateral
- (12A O.S. 1981 §9-203)

If your security interest is to be prior to other third parties' security interests in the same collateral, you must perfect (i.e., record notice of) your lien in the chattel records (i.e., the personal property mortgage records) of the appropriate County Clerk, or have possession of the personal property. (12A O.S. 1981 §§9-302 to 9-305, 19 O.S. 1981 §290) In order to determine which County Clerk's office to record your notice in you need to determine the types of personal property your security agreement covers. While a security agreement can generally cover all the types of personal property that exist, the usual categories included in a landlord-tenant situation are "furniture", "equipment" and "fixtures" which are all "goods". "'Goods' includes all things which are moveable at the time the security interest attaches or which are fixtures " (12A O.S. 1981 §9-105(h) Goods are classified as "consumer goods", "equipment", "farm products", or "inventory" In our situation, our furniture, equipment and fixtures, are probably "consumer goods" in a residential situation and "equipment" in a non-residential setting. "Goods are (1 'consumer goods' if they are used or bought for use primarily for personal, family or household purposes; (2) 'equipment' if they are used or bought for use primarily in business (including farming or a profession) or by a debtor who is a nonprofit organization or a governmental subdivision agency or if the goods are not included in the definitions of inventory, farm products or consumer goods." (12A O.S. 1981 §9-109)

The proper place to file in order to perfect a security interest is as follows:

- (a) when the collateral is equipment used in farming operations, or farm products or accounts or general intangibles arising from or relating to the sale of farm products by a farmer, or consumer goods, then in the office of the county clerk of the debtor's residence, or if the debtor is not a resident of this state, then in the office of the county clerk where the goods are kept, and in addition, when the collateral is crops growing or to be grown, in the office of the county clerk in the county where the land is located;
 - (b) when the collateral is timber to be cut or is minerals or the like, including oil and gas, or accounts subject to subsection (5) of Section 7 of this act, or when the financing statement is filed as a fixture filing (Section 9-313) and the collateral is goods which are or are to become fixtures, then in the office where a mortgage on the real estate would be filed or recorded; in all other cases, in the office of the county clerk of Oklahoma County;
- when the collateral is livestock, in the county of the debtor's residence and in the office of the county clerk of Oklahoma County." (12A O.S. 1981 §9-401(1))

Therefore, as to our "consumer goods" and "equipment" the proper place for filing is the office of the county clerk of

Oklahoma County, Oklahoma, regardless of which county the rented premises are located in.

And to perfect an interest in "fixtures" the notice is to be filed "in the office where a mortgage on the real estate would be filed or recorded" which is in the records of the county clerk of the county where the real property is located

If another third party perfects their security interest before you perfect your interest, your lien is subordinate to the other party's lien. (12A O.S. 1981 §§9-301 to 9-312) It should be noted that if you record the notice of your security interest in several counties, including some wrong ones, that in whatever counties the notice is recorded properly, or if the third party has actual knowledge of the existence of the security agreement, that such third parties as receive such constructive or actual notice acquire an interest subordinate to yours. (12A O.S. 1981 §9-401(2))

For ease of filing notice of a security interest on personal ~~property~~, a short standard form entitled a Financing Statement ("UCC-1") form has been designed by the State Examiner and Inspector. (See Attachment B) This UCC-1 must contain at a minimum the following information:

- a. Names of debtor and secured party,
- b. Signature of debtor,
- c. Addresses of the debtor and secured party, and
- d. Statement indicating the types, or items, of collateral. (12A O.S. 1981 §9-402(1

Up until October 1 1981, if you sought to encumber fixtures as well as other forms of personal property, you did not need an acknowledgement on the UCC-1. (12A O.S. 1971 §9-402; Opin.Atty.Gen. 70-261 (See Attachment C) However, as of October 1, 1981, you must include an acknowledgement as part of your UCC-1 fixture filing, for the filing of the UCC-1 to be recordable and to constitute constructive notice to third parties of your interest. (12A O.S. 1981 §9-402(1,5) As noted above the UCC-1 must contain the signature of the party to be bound i.e., the debtor, to be recordable and to be constructive notice. However, you can record the UCC-1 with only the creditor's signature and not the debtor's signature "if it is filed to protect a security interest in:

- (a) collateral already subject to a security interest in another jurisdiction when it is brought into this state, or when the debtor's location is changed to this state. Such a financing statement must state that the collateral was brought into this state or that the debtor's location was changed to this state under such circumstances; or
- (b) proceeds under Section 9-306 if the security interest in the original collateral was perfected. Such a financing statement must describe the original collateral; or
- (c) collateral as to which the filing has lapsed; or
- (d) collateral acquired after a change of name,

identity or corporate structure of the debtor (subsection (7) of this section). (12A O.S. 1981 §9-402-2)

A copy of the security agreement is sufficient as a financing statement if it contains the above information names of parties, (b) addresses of parties, and (c) description of collateral and is signed by the debtor.... (12A O.S. 1981 §9-402(1))

"A carbon, photographic or other reproduction of a security agreement or financing statement is sufficient as a financing statement if the security agreement so provides or if original has been filed in this state." (12A O.S. 1981 §9-402(1))

If you submit a UCC-1 with carbon copy signatures the County Clerk must accept and record such copies but the legal effect of such a filing as to whether or not constructive notice is given is unknown. (Opin. Atty. Gen. 63-249) (See Attachment D)

C. ENFORCEMENT

~~Unless~~ "Unless otherwise agreed a secured party has on default right to take possession of the collateral. In taking possession a secured party may proceed without judicial process if this be done without breach of the peace or may proceed by action. If the security agreement so provides the secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties. Without removal a secured party may render equipment unusable, and dispose of collateral on the debtor's premises under Section 9-504." (12A O.S. 1981 §9-503)

"When a debtor is in default under a security agreement, a secured party has the rights and remedies provided in this part [i.e., PART 5 DEFAULT], and ... those provided in the security agreement. He may reduce his claim to judgment, foreclose or otherwise enforce the security interest by any available judicial procedure." (emphasis added) (12A O.S. 1981 §9-501(1); also see Farmers State Bank in Afton v. Ballew, Okl.App., 626 P.2d 337 (1981))

"A secured party, after default, may sell, lease or otherwise dispose of any or all of the collateral in its then condition or following any reasonable preparation or processing. (12A O.S. 1981 §9-504(1

"Disposition of the collateral may be by public or private proceedings and may be made by way of one or more contracts. Sale or other disposition may be as a unit or in parcels and at any time and place and on any terms but every aspect of the disposition including the method, manner, time, place and terms ~~must be~~ commercially reasonable. ... The secured party may buy at any public sale and, if the collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations, he may buy at private sale." (12A O.S. 1981 §9-504(3)) The notice to be sent to the debtor telling him of the proposed private or public sale must be "sent" but "receipt" is not required for a valid sale. (Beneficial Finance Company v. Young, Okl., 612 P.2d 1357 at 1358 (1980)

any other case [other than where 60% of loan on consumer goods has been paid] involving consumer goods or any other collateral a secured party in possession may, after default, propose to retain the collateral in satisfaction of the obligation. Written notice of such proposal shall be sent to the debtor if he has not signed, after default, a statement renouncing or modifying his rights under this subsection. In the case of consumer goods, no other notice need be given. In other cases, notice shall be sent to any other secured party and any holder of a subordinate lien from whom the secured party has received, before sending his notice to the debtor or before the debtor's renunciation of his rights, written notice of a claim of an interest in the collateral. If the secured party receives objection in writing from a person entitled to receive notification within twenty-one (21) days after the notice was sent, the secured party must dispose of the collateral under Section 9-504. In the absence of such written objection, the ~~secured~~ party may retain the collateral in satisfaction of the debtor's obligation." (12A O.S. 1981 §9-505(2))

"(1) A secured party must use reasonable care in the custody and preservation of collateral in his possession. ... (2) Unless otherwise agreed, when collateral is in the secured party's possession: (a) reasonable expenses ... incurred in the custody, preservation, use or operation of the collateral are chargeable to the debtor and are secured by the collateral; (b) the risk of accidental loss or damage is on the debtor to the extent of any deficiency in any effective insurance coverage; (c) the secured

party may hold as additional security any increase or profits (except money) received from the collateral, but money so received, unless remitted to the debtor, shall be applied in reduction of the secured obligation; (d) the secured party must keep the collateral identifiable but fungible collateral may be commingled; (e) the secured party may repledge the collateral upon terms which do not impair the debtor's right to redeem it. (3) A secured party is liable for any loss caused by his failure to meet any obligation imposed by the preceding subsections but does not lose his security interest. (4) A secured party may use or operate the collateral for the purpose of preserving the collateral or its value or pursuant to the order of a court of appropriate jurisdiction or, except in the case of consumer goods, in the manner and to the extent provided in the security agreement." (12A O.S. 1981 §9-207)

While a secured creditor is liable for actual damage suffered by debtor due to failure to notify debtor of sale, ~~secured~~ creditor still has his security interest. (12A O.S. 1981 § 9-207(3); Beneficial Finance supra at 1359-1360)

A suit and journal entry establishing the debt owed to the secured creditor, sets the stage for a judicial execution, levy and sale, with court confirmation. (12 O.S. 1981 §§731 et. seq.

After the court identifies the amount of the judgment the court clerk issues an execution to the Sheriff of the county or counties where the debtor's personal property is located. Real property is levied on after the disposal of personal property. (12 O.S. 1981 §§736, 751)

The Sheriff advertises in advance the sale of the debtor's personal property, giving ten (10) days notice of the sale by newspaper advertisement. (12 O.S. 1981 §757) Such sale will be conducted by the Sheriff and considered complete upon exchange of the buyer's funds for the personal property being sold and upon the filing of the return by the Sheriff.

Therefore, in conclusion the tenant is authorized by statute to expressly grant to the landlord a lien on specified classes or items of property pursuant to the U.C.C. as supplemented by the terms of the agreement. This lien can be enforced by peaceable self-help or by judicial action.

V. CONCLUSION

In conclusion, Oklahoma does not have a possessory common law landlord's lien, there is a statutory innkeeper's and residential landlord's lien which can be enforced, executed on, and sold at a Sheriff's sale, and there is a contractual lien available in both residential and non-residential situations ~~which can~~ be enforced either by foreclosure, execution, levy and Sheriff's sale, or by self-help repossession and sale (or retainage by the secured creditor.

ATTACHMENT A

SAMPLE COMMERCIAL OFFICE LEASE,
WITH LANDLORD'S LIEN PROVISION

LEASE AGREEMENT

This Lease Agreement is made and entered into this _____ day of _____, 19_____, by and between "Landlord" and "Tenant" hereinafter named:

Definitions and certain Basic Provisions:

(a) "Landlord": _____

Address for Notices and Requests:

(b) "Tenant": _____

Addresses for Notices and Billings:

Door Sign and Directory Wording:

(c) The "Building"

(d) "Leased Premises": The Leased Premises contain an area of approximately _____ square feet, known as Suite # _____

"Tenant Area": The Tenant Area contains approximately _____ square feet.

(e) "Term": _____ years;

"Term Commencement Date" _____, 19____

"Term Expiration Date" _____, 19____

(f) "Minimum Rental" \$ _____ per year

\$ _____ per month

(g) Anticipated Tenant Share of Operating Expenses _____ %

(h) "Annual Estimated Operating Costs Per Square Foot" \$ _____

WHEREAS, Landlord is the owner of a certain tract of real property, together with the improvements thereon and the appurtenances thereunto belonging, which real property is more particularly described on Exhibit "A" attached hereto (the "Real Estate"); and

WHEREAS, the "Building" is contemplated or in existence on the Real Estate; and

WHEREAS, the Tenant desires to lease from the Landlord certain space in the "Building" in accordance with the terms, conditions and provisions of this Lease Agreement.

NOW THEREFORE, in consideration of the premises, the mutual covenants herein contained, and other fair and valuable considerations, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. **Lease.** Landlord hereby leases and rents to Tenant and Tenant hereby leases and rents from Landlord certain space in the "Building", as shown on Exhibit "B" attached hereto, otherwise identified as the "Leased Premises".

2. **Term.** The term of this Lease Agreement shall commence on the later of (i) a date ten (10) days following the date on which the Leased Premises are ready for occupancy, except for items of work and mechanical adjustment of equipment and fixtures which either (a) because of season or weather or the nature of the item cannot reasonably be completed at the time and are not necessary to make the Leased Premises usable by Tenant for the purposes contemplated hereby, or (b) are not then completed because of delay by Tenant in submitting information required to be provided by Tenant hereunder, and (ii) the "Term Commencement Date", and shall end on the "Term Expiration Date", at which date the tenancy created hereunder shall terminate without notice.

3. Rent

3.1 **Amount of Rent.** Tenant promises and agrees to pay the "Minimum Rental" for the use of the leased premises of the term hereof. Each monthly installment to be due and payable, in advance, on the first day of each calendar month during the term hereof.

3.3 **Fractional Months.** If the date on which the term of this Lease begins shall be a date other than the first day of a calendar month, rental due hereunder for such month shall be prorated through the last day of such month and shall be due and payable on the first day of the term hereof. Rent for such period shall be in addition to the rent specified in paragraph 3.1 hereof. If the date on which the term of this Lease ends shall be a day other than the last day of a calendar month, rental due hereunder for such calendar month shall be prorated through the last day of the term of this Lease.

3.3 Additional Rent.

3.3.1. **Definitions.** For purposes of this paragraph, the following terms shall have the following definitions:

3.3.1.1. **Operating Expenses.** "Operating Expenses" shall mean any of the following costs incurred by Landlord with respect to the Building and all other office buildings located on the Real Estate: salaries, wages, payroll taxes, workmen's compensation insurance, electricity, gas, utility charges, taxes, water, hazard and liability insurance premiums, maintenance, building and cleaning supplies, uniforms and dry cleaning, window cleaning, maintenance of parking areas, service contracts with independent contractors, management fees not exceeding five percent (5%) of gross rental with respect to such buildings, imputed cost equal to the loss of rent caused by Landlord's making space available for building management and leasing offices, fixed and additional rent payable under any ground lease of the Real Estate, telephone, telegraph, stationary, advertising, and all other expenses paid in connection with the Building and any other such building and property chargeable against income. In addition, it is agreed that if Landlord installs a new or replacement capital item for the purpose of reducing Landlord's Operating Expenses, the cost thereof, as reasonably amortized by Landlord, with reasonable interest on the unamortized amount, shall be included in the Operating Expenses.

3.3.1.2. **Real Estate Taxes and Assessments.** "Real Estate Taxes and Assessments" shall mean and include all general and special taxes and assessments levied upon or assessed against the Building, other office buildings located on the Real Estate, or the Real Estate. With reference to special assessments, when the same are payable over a period of years, only that portion required by law to be paid during a calendar year, together with any interest thereon, shall be treated as a tax or assessment allocable to such year.

3.3.1.3. **Total Rentable Area.** "Total Rentable Area", for any calendar year, shall mean the average of the monthly calculations of the total area of the Building and all other office buildings located on the Real Estate which is rentable, expressed in square feet. Monthly calculations of rentable area shall be made as of the first day of each calendar month.

3.3.2. **Increase in Operating Expenses and Real Estate Taxes and Assessments.** If during any calendar year during any part of which this Lease shall be in effect, the sum of the Operating Expenses and the Real Estate Taxes and Assessments exceeds the product of (i) the Total Rentable Area for such year, and (ii) "Annual Estimated Operating Costs Per Square Foot", Tenant shall pay landlord, as additional rent hereunder, its proportionate share of such excess, which share shall be computed on the manner set forth in paragraph 3.3.3 hereof.

3.3.3. **Tenant's Share.** The portion of any such excess in Operating Expenses and Real Estate Taxes and Assessments payable by Tenant for any calendar year (the "Additional Rent") shall be a percentage determined by dividing (i) the total area, expressed in square feet, of the Leased Premises, by (ii) the Total Rentable Area for such calendar year. In no event shall the Additional Rent for any calendar year be less than the Additional Rent for the preceding calendar year.

3.3.4. **Determination of Additional Rent.** Additional Rent payable by Tenant under this paragraph shall be determined annually. Landlord shall, as soon as possible after the determination of the Additional Rent for any calendar year, but no later than April 30 of the following calendar year, furnish Tenant a statement in writing setting forth the amount of Additional Rent and the basis for the calculation thereof.

3.3.5. **Payment of Additional Rent.** Within ten days of Tenant's receipt of such notice, Tenant shall pay to Landlord (i) all Additional Rent for the previous calendar year not theretofore paid, and (ii) the product of 1/12 of the Additional Rent for the previous calendar year and the number of months in the current calendar year for which monthly rent was theretofore due and payable, less Additional Rent already paid during such months, for application on the Additional Rent payable with respect to such calendar year. From and after Tenant's receipt of such notice until Tenant's receipt of a notice hereunder for any subsequent calendar year, there shall be due from Tenant on the first day of each calendar month an amount equal to 1/12 of the Additional Rent set forth therein, to be applied against the Additional Rent owed for the calendar year or years in which such payments are made.

3.3.6. **Partial Years.** If this Lease begins on a day other than the first day of a calendar year or ends on a day other than the last day of a calendar year, the Additional Rent for such calendar years shall be prorated. Tenant's obligation to pay Additional Rent for the final calendar year during any part of which this Lease shall be in effect shall survive the expiration or termination hereof.

3.4. **Delinquent Rent.** All rent which is not received by Landlord within ten days after such rent is due and payable shall accrue interest at the rate of 1 1/2% per month from the date when due until paid. Any accrual of interest shall not prejudice any of the remedies available to Landlord hereunder or under the law.

4. **Use of Premises.** Tenant shall not use the Leased Premises, nor allow it to be used during the term of this Lease for any purpose other than an office without the prior written consent of the Landlord. At all times during the term of this Lease the Tenant shall, in all respects, comply with all laws, orders, regulations, or ordinances promulgated by any federal, state or local government affecting the use, occupation, safety and cleanliness of the Leased Premises and all personal property and fixtures located thereon. Tenant will not operate on the Leased Premises any equipment or machines other than normal business equipment used in Tenant's customary business operation without the prior written consent of Landlord, which consent shall not be unreasonably withheld. Landlord may condition any such consent upon the payment by Tenant of additional rent as compensation for any excess consumption of water, electricity, or wiring as may be occasioned by the operation of said equipment or machinery, at the regular rate charged by the public utility company that furnishes such services to the Building.

5. **Improvements and Alterations.** Landlord shall, at its sole cost and expense, prior to commencement of the term of this Lease, (i) construct the Building and (ii) install the improvements to the Leased Premises described on Exhibit "C" attached hereto (the "Standard Tenant Finish").

5.1 **Additional Improvements.** In the event the landlord performs any work for the Tenant that is requested by Tenant and is not included in the Standard Tenant Finish, Tenant shall pay to Landlord (i) all costs incurred by Landlord in the performance of such work, and (ii) a fee for supervision of such work known as "Supervision Fee". An amount equal to one-half (1/2) of the Landlord's estimate of all amounts payable hereunder shall be paid concurrently with the request that such work be performed. All remaining sums shall be paid on the date the term hereof commences. All such sums which are not paid to landlord when due hereunder shall accrue interest thereafter at the rate of 1 1/2% per month until paid. The accrual of interest on such amounts shall not

6. **Maintenance of Leased Premises.** The Landlord shall maintain and keep clean the Leased Premises. Any repairs which are necessitated by reason of the negligence or willful misconduct of Tenant, its agents, employees or invitees, shall be made at the sole cost and expense of Tenant.

7. **Landlord's Services.** Landlord shall provide regular elevator passenger service from 7:30 a.m. to 5:30 p.m., Monday through Friday, and from 7:30 a.m. to 1:00 p.m. on Saturday, and limited service 24 hours of each day, including holidays, during the term hereof. Such service may be by self-operated elevators. Freight service shall cover any articles that cannot be carried by hand, and only by a permit from the Landlord, and may, at Landlord's option, be limited to hours prior to 8:00 a.m. and after 5:00 p.m. on Monday through Friday and after 1:00 p.m. on Saturday. Freight elevator service shall not be provided for any articles which, in the opinion of Landlord, are too heavy for the lifting capacity of the Building's elevators, allowing a reasonable margin for safety.

7.2 **Heating.** Landlord shall furnish adequate heat.

7.3 **Air Conditioning.** Landlord shall furnish adequate air conditioning.

7.4 **Water.** Landlord shall furnish drinking water on each floor of the Leased Premises and hot and cold water in the restrooms on each floor of the Leased Premises.

7.5 **Electricity.** Landlord shall furnish electricity for normal business equipment used by Tenant in its customary business operation. Landlord shall not be liable to Tenant for any failure or defect in the supply or character of electricity furnished to the Leased Premises by reason of any requirement, act, or omission of the public utility company serving the Building with electricity, or for any other reason not attributable to Landlord.

7.6 **Janitorial Services.** Landlord shall furnish janitorial services for five (5) days each week, which janitorial services shall be of a character furnished comparable office buildings in Oklahoma City, Oklahoma.

8. **Access.** Tenant shall provide Landlord and its agents access to the Leased Premises at all reasonable times to inspect the same and make such repairs as may be required to properly maintain and clean the Building.

9. **Representations, Warranties and Covenants of Tenant.** The Tenant represents, warrants and covenants as follows:

9.1 **Sale of Food, Other Uses.** Tenant will not use or permit others to use the Leased Premises for the retail sale of food, soft drinks, candy, or tobacco and will not use or permit others to use the Leased Premises for living, sleeping or cooking quarters, manufacturing, warehousing, or any unlawful purposes.

9.2 **Animals, Dangerous Substances.** Tenant will not keep animals, refuse or any other articles or substances upon the Leased Premises that may cause a fire, explosion, health or other hazard.

9.3 **Nuisances.** Tenant will not create any odor or noise or engage in any other activity on the Leased Premises that may be offensive to other Tenants.

9.4 **Use of Hallways.** Tenant will not place any articles or substances in the hallways within the Building.

9.5 **Signs.** Except as set forth herein, Tenant will not place any signs or advertising on the Building, windows, doors, or corridor doors. Tenant may place the name of the Tenant, the names of its personnel and a designation of its business on the corridor doors adjoining the Leased Premises, using a color design, place and size of lettering prescribed by Landlord. No such signs shall extend beyond the Leased Premises.

9.6 **Use of Building Name.** Without the prior written consent of the Landlord, Tenant shall not use the name of the Building in connection with its business, except as its address, or use, in its advertising, a picture, sketch or other representation of the Building.

9.7 **Heavy Articles.** Tenant will not place on the Leased Premises any safe or other article of such weight as to create a hazard to persons or property.

9.8 **Surrender of Possession.** Tenant will surrender possession of the Leased Premises upon the expiration or prior termination of this Lease, in the same condition as at the beginning at the term of this Lease, reasonable wear and tear excepted.

9.9 **Indemnification.** Tenant will at all times protect, save harmless, and indemnify the Landlord against all causes of action, claims, demands, suits, judgments, and liabilities of every kind and character which may arise, be imposed, or be incurred as a consequence of or arising out of any act, default, negligence or omission, willful or otherwise, on the part of the Tenant, its agents, employees or invitees, or arising out of the conduct by the Tenant of its business upon the Leased Premises. The Tenant shall carry public liability and property damage insurance in such amounts and with such companies as may be reasonably required by Landlord. Landlord shall be named as insured in all such policies, and Tenant shall furnish to Landlord, when the same are requested by Landlord, certificates evidencing such insurance and evidence of the payment of premiums therefor.

9.10 **Rules and Regulations.** Landlord reserves the right to make such reasonable rules and regulations as Landlord may deem necessary to preserve the safety, cleanliness, and efficient operation of the Building, which rules and regulations shall be considered a part of this Lease after written notice thereof is given Tenant.

10. **Insurance and Risks.** Landlord shall carry no insurance on the Property of the Tenant, and Landlord shall incur no liability to Tenant, its agents, employees or invitees, for any damage caused by or resulting from (a) interruption or inadequacy of elevator service, heating, air conditioning, electrical service, janitorial service, overheating, overcooling, or the failure of any other service (however, the cause of such interruption or inadequacy shall be diligently remedied by Landlord); (b) any damage caused by, or resulting from fire, explosion, wind storm, tornado, leakage of water, gases, steam, rain, snow, falling plaster, glass breakage, theft, burglary, robbery, vandalism, riot or any other casualty or other risk of the type covered by a standard fire insurance policy, with an extended coverage endorsement, including earthquakes; or (c) any damage caused by or resulting from the acts or omissions of the Tenant or other tenants of the Building, their agents, employees or invitees, or trespassers.

11. **Assignment and Subletting.** The Tenant may not assign this Lease, nor sublet the whole or any part of the Leased Premises, either voluntarily or involuntarily, without the prior written consent of the Landlord, which consent shall not be unreasonably withheld. If such consent is given, such consent shall not release the Tenant from any of its covenants hereunder, including the covenant to pay rent and additional rent for the term hereof. This paragraph shall not impair the right of the Landlord to assign this Lease as collateral for repayment of a mortgage loan, or any other purpose. In the event the Tenant assigns this Lease or sublets the Leased Premises, in its entirety, under an assignment or sublease which calls for the payment of sums to Tenant, whether designated as rent or otherwise, in excess of the rent and Additional Rent payable hereunder, such excess shall be promptly paid to Landlord as and when received by Tenant. In the event the Tenant subleases a portion of the Leased Premises under a sublease which calls for the payment of sums to the Tenant, whether designated as rent or otherwise, which sums constitute a greater amount for each square foot of space subject to said sublease than the rent and Additional Rent payable hereunder for each square foot of the Leased Premises, then Tenant shall promptly pay said excess to Landlord as and when received by Tenants.

12. **Subordination to Mortgage.** This Lease shall be subject and subordinate to the lien of any existing or future first mortgage covering the Leased Premises, or any part thereof. Tenant will, upon request by Landlord, or its mortgagee certify in writing to any mortgagee of Landlord that this Lease is unmodified and in full force and effect, which certificate shall state the date to which rental has been paid hereunder, and whether or not, to the best information and belief of the signer of the certificate, there exists any default in the performance of any covenant, agreement, term, provision, or condition contained in this Lease Agreement, and, if any such default exists, such certificate may be relied upon by Landlord and by any mortgagee or prospective mortgagee under any mortgage affecting the Leased Premises. The word "mortgage", when used herein, includes mortgages, deeds of trust or other similar instruments, and any modifications, extensions, renewals or replacements thereof.

13. **Waiver of Subrogation.** Notwithstanding anything to the contrary herein contained, the parties hereto expressly waive any right of recovery against each other that either may have by virtue of any loss or damage to the Leased Premises caused by fire, windstorm, or other risks of the type covered by a standard fire insurance policy, with extended coverage endorsement, except any loss or damage which is caused by the willful misconduct by either party, or their respective agents, servants or employees. Provided, however, this waiver shall be in force and effect only if such waiver does not conflict with or impair the right of the party making such waiver to recover under any hazard insurance policy in force at the time of the loss. Landlord and Tenant agree to use their best efforts to obtain a waiver of subrogation endorsement to their respective hazard insurance policies. Any charge for a waiver of subrogation endorsement by an insurance company shall be paid by the party benefited thereby.

14. **Holding Over.** In the event Tenant remains in possession of the Leased Premises, or any part thereof, after the expiration of the term of this Lease, Tenant shall be deemed to be occupying the Leased Premises from month to month, otherwise subject to all conditions, provisions and obligations of this Lease Agreement, except that during such period the rental payable for the Leased Premises shall be the higher of (i) the rent and Additional Rent payable by Tenant hereunder as of the expiration of the term hereof, and (ii) the product of the then prevailing rent per square foot for comparable space in the Building and the total area, expressed in square feet, of the Leased Premises.

15. **Risk of Loss to Tenant's Property.** The Tenant assumes all risk of damage to any property which is placed in or on the Leased Premises by Tenant and shall hold harmless the Landlord for any claim upon the same.

16. **Loss or Damage to Leased Premises.**

16.1 **Total Destruction.** If the Leased Premises are destroyed by casualty and, in the opinion of the Landlord cannot be economically repaired, this Lease shall terminate as of the date of such destruction or damage.

16.2 **Partial Destruction.** If the Leased Premises are damaged by casualty and in the opinion of Landlord can be economically repaired, Landlord shall, with reasonable diligence, with allowance for insurance adjustments, strikes, shortage of materials and labor, repair the damage. If, during the period of repair, the entire Leased Premises are rendered untenable, rent shall abate for such period. In such event Tenant agrees that the term of this Lease shall be extended from its expiration date for a period equal to that period during which rent shall have abated. If the Leased Premises can be partially used during such period, there shall be an equitable apportionment of the rent, based on the portion of the Leased Premises rendered untenable, until the damage has been repaired. Repairs may be made during normal business hours and there shall be no abatement of rent by reason of inconvenience, provided that such repairs are made within reasonable time.

19. **Mechanic's and Materialmen's Liens.** If any mechanic's or materialmen's liens shall at any time be filed against the Leased Premises, or any part thereof, by reason of any work, labor, services, materials, or equipment furnished to or for Tenant, the Tenant, within 30 days after notice of the filing thereof, shall cause the same to be discharged of record. Nothing herein shall be deemed or construed in any way as constituting the consent or the request of Landlord, express or implied, to any contractor, subcontractor, laborer or materialmen for the performance of any labor or the furnishing of any materials for any improvement, alteration or repair of the Leased Premises or any part thereof, nor as giving the Tenant any right, power, or authority to contract for or permit the rendering of any services or the furnishing of any materials that would give rise to the filing of any lien against the Leased Premises or any part thereof.

20. **Default by Tenant.** The breach of any term, condition, provision, representation or warranty of this Lease Agreement, the vacation by Tenant of any portion of the Leased Premises, any action by Tenant which may create a lien on the Leased Premises, or any part thereof, the appointment of a receiver, trustee in bankruptcy, conservator or any other representative for any guarantor of Tenant's obligations under this Lease, shall constitute an event of default under this Lease Agreement.

21. **Landlord's Remedies.** If an event of default occurs hereunder, as defined in paragraph 20 hereof, Landlord may, at its option, and without notice, terminate this Lease. If Landlord does not terminate this Lease, Landlord may, at its option, reenter the Leased Premises and relet the Leased Premises for the benefit of Tenant, in which event the Tenant shall pay to Landlord any costs incurred by Landlord in such action, together with the difference between any rent and Additional Rent received by Landlord and the rent and Additional Rent for which Tenant is obligated hereunder. If the Landlord elects not to terminate this Lease and does not reenter the Premises and relet the same for the benefit of the Tenant, the Tenant shall pay to the Landlord all rent and Additional Rent for which it is obligated hereunder for the remainder of the term of this Lease, as provided herein. Provided, however, any decision by Landlord to exercise any one of such options, unless such option is the termination of this Lease, shall not preclude a later decision to exercise a different option. Upon any default by Tenant without abandoning the Leased Premises, Landlord may lawfully enter into and upon the Leased Premises or any part thereof and repossess the same and expell the Tenant or persons claiming under and through it, and remove any personal property, forcibly, if necessary, without being guilty of trespass, and without prejudice to any other remedies which may be available to Landlord for Tenant's breach. In the event the Tenant defaults under any of the terms and conditions of this Lease Agreement, with or without an abandonment of the Leased Premises, Landlord may, at its sole option, declare all rent and additional rent for the entire term of this Lease to be immediately due and payable.

22. **Security Deposit.** Concurrently with the execution hereof Tenant has deposited with Landlord the "Security Deposit" receipt of which is hereby acknowledged, as security for the full performance of all obligations of the Tenant hereunder. If Tenant defaults in the performance of any of its obligations hereunder, Landlord may, but shall not be obligated to, use, apply, or retain all or any portion of such security deposit for the payment of any rent or other amount which Landlord may spend or become obligated to spend by reason of Tenant's default or to compensate Landlord for any loss or damage which Landlord may suffer by reason of such default. If Landlord does not elect to apply such security deposit in such manner, the fact that Landlord is holding such security deposit shall not prejudice any other remedies available to Landlord hereunder or under law. If any portion of such security deposit is so used, Tenant shall within five days after written demand therefor deposit an additional amount with Landlord sufficient to restore the security deposit to its original amount. Tenant shall not be entitled to any interest on its security deposit. If Tenant shall fully and faithfully perform each and every condition of this lease to be performed by it, the security deposit, or any balance thereof, shall be returned to Tenant upon the expiration of the term hereof.

23. **Relocation.** Landlord reserves the right to relocate the Leased Premises to comparable space within the Building or any other building located on the Real Estate by giving Tenant prior written notice of its intention to relocate. If within 30 days after receipt of such notice Landlord and Tenant have not agreed on the space to which the Leased Premises are to be relocated and the timing of such relocation, this Lease Agreement shall, at Landlord's option, terminate on the date which is 60 days after Tenant's receipt of such notice. If Landlord and Tenant do so agree, then, effective on the date of such relocation, this Lease shall be amended by deleting the description of the Leased Premises and substituting therefor a description of such comparable space to which Landlord and Tenant have agreed. Landlord agrees to pay the reasonable expenses in moving Tenant to such other space.

24. **Legal Relationship.** The legal relationship between Landlord and Tenant shall be that of landlord and tenant.

25. **Costs and Fees.** Tenant agrees to pay all costs and attorneys' fees incurred by Landlord in enforcing any of the obligations of Tenant under this Lease or enforcing any of the rights of Landlord hereunder.

26. **Performance by Landlord.** In the event Tenant shall fail to pay any obligation for which it is responsible hereunder Landlord may, without prejudice to any other remedies which may be available to it, pay such charge or claim. In the event Landlord pays such charge or claim pursuant to this provision, it shall be immediately reimbursed by Tenant. Any sums for which Landlord is not reimbursed within ten (10) days of its presentation of a statement therefor to Tenant shall accrue interest at the rate of 1½% per month until paid.

27. **Acceptance of Leased Premises.** Upon request from Landlord, Tenant agrees to execute a tenant acceptance letter, certifying that the Leased Premises are accepted for occupancy in accordance with the terms of this Lease, and the date rent commenced hereunder.

28. **Abandoned Property.** All personal property not removed by Tenant from the Leased Premises within ten (10) days after the termination of this Lease will be conclusively presumed to have been abandoned by Tenant, and the Landlord may, at its option, take possession of such property and dispose of it in such manner, and for such consideration as Landlord deems advisable.

29. Notices.

29.1 **Form of Notices.** All notices, requests, demands, instructions, or other communications called for hereunder or contemplated hereby shall be in writing and shall be deemed to have been given if personally delivered in return for a receipt or mailed first class, postage prepaid, by registered or certified mail, return receipt requested, to the parties at the address set forth below. Any party may change the address to which notices are given hereunder by giving notice in the manner herein provided.

30. **Recording.** The parties hereto agree that a memorandum of this Lease Agreement may be filed for record in the office of the County Clerk of Oklahoma County in lieu of recording the entire instrument. Upon request of either, the parties agree to execute such a memorandum of this Lease Agreement.

31. **Time of the Essence.** Time shall be of the essence with respect to the performance by the parties of their respective obligations hereunder.

32. **Whole Agreement — No Oral Modification.** This Lease Agreement embodies all representations, warranties, and agreements of the parties hereto and may not be altered or modified except by an instrument in writing signed by the parties.

33. **Consent to Breach.** Any assent, express or implied, to any breach of a covenant or condition herein contained, shall operate as such only in a specific instance and shall not be construed as an assent or waiver of any such covenant or condition, generally, or any subsequent breach thereof.

34. **Remedies Cumulative.** The various rights, powers, elections and remedies of the parties hereto shall be considered as cumulative, and no one of them is exclusive of the others, or exclusive of any right or priority allowed by law, and no right shall be exhausted by being exercised on one or more occasions.

35. **Benefit of Agreement.** It is agreed that all the terms, conditions, covenants and obligations contained herein shall be binding upon and the benefits shall inure to the parties and their respective successors and assigns.

36. **Governing Law.** This Lease Agreement shall be governed by and construed in accordance with the laws of the State of Oklahoma applicable to contracts made and performed entirely therein.

37. **Counterparts.** This Lease Agreement may be executed in any number of counterparts which, taken together, shall constitute one and the same instrument.

38. **Section Headings.** The section headings contained in this Agreement are for convenient reference only and shall not in any way affect the meaning or interpretation of this Lease Agreement.

39. **Approval by Lenders.** Landlord and Tenant are aware that this Lease must be approved by Landlord's interim and permanent mortgage lenders. In connection therewith Landlord shall exercise its best efforts to secure such approval at the earliest practical date and the parties hereto shall promptly and in good faith consider the reasonable revisions, if any, required by Landlord's lenders. If Tenant shall refuse to consent to any such reasonably required revisions, Landlord may elect to terminate this Lease, in which event neither party shall have any further obligations hereunder.

40. **Certificates.** The Tenant agrees to execute and deliver from time to time within ten (10) days after written request by the Landlord a certificate to the effect that: this Lease is then presently in full force and effect and unmodified; the Lease Term has commenced and the full Rent is then accruing hereunder; the Tenant has accepted possession of the Leased Premises; all Leasehold Improvements have been completed to the satisfaction of the Tenant; no rent has been paid more than thirty (30) days in advance of its due date; the address for notices to be sent to the Tenant is as set forth in such certificate or at the Leased Premises; the Tenant will look only to the Landlord for return of any deposit hereunder; the Tenant claims no offset against rent due or to become due hereunder; and to the knowledge of the Tenant, the Landlord is not then in default under this Lease. The certificate will also contain an agreement by the Tenant with the Holder that after the date of such certificate, the Tenant will not: pay any rent more than thirty (30) days in advance of its due date; surrender or consent to the modification or termination of this Lease by the Landlord; or seek to terminate this Lease by reason of any default by the Landlord until the Tenant has given written notice of such default to the Holder and such default shall not have been cured within a reasonable time after giving such notice.

EXECUTED AND DELIVERED the day and year first above written.

"Landlord"

By _____
General Partner

"Tenant"

By _____

STATE OF OKLAHOMA)
COUNTY OF OKLAHOMA) SS.

The foregoing instrument was acknowledged before me this _____ day of _____, 19____, by

Notary Public

My commission expires:

STATE OF OKLAHOMA)
COUNTY OF OKLAHOMA) SS.

The foregoing instrument was acknowledged before me this _____ day of _____, 19____ by

Notary Public

My commission expires:

GUARANTY

FOR VALUE RECEIVED, and in consideration of the giving of the within lease, the undersigned guarantees to the Landlord, its successors and assigns, the full performance and observance of all the covenants, conditions, and agreements therein provided to be performed and observed by the Tenant, without requiring any notice of nonpayment, nonperformance, or nonobservance, or proof or notice or demand to charge the undersigned therefor, nor shall failure of the Landlord to enforce its rights against the Tenant, or concessions made by the Landlord to the Tenant affect the liability hereunder.

DATED, Oklahoma City, Oklahoma _____, 19____.

Guarantor

ATTACHMENT B

UCC-1 FINANCING STATEMENT

INSTRUCTIONS

1. PLEASE TYPE this form. Fold only along perforation for mailing.
2. Remove Secured Party and Debtor copies and send other 3 copies with interleaved carbon paper to the U.C.C. Filing Officer. Enclose filing fee.
3. If the space provided for any item(s) on the form is inadequate the item(s) should be continued on additional sheets, preferably 5" x 8" or 8" x 10". Only one copy of such additional sheets need be presented to the filing officer with a set of three copies of Form UCC-1. Long schedules of collateral, indentures, etc., may be on any size paper that is convenient for the secured party.
4. If collateral is crops or goods which are or are to become fixtures, describe the real estate and give name of record owner.
5. When a copy of the security agreement is used as a financing statement, it is requested that it be accompanied by a completed but unsigned set of these forms, without extra fee.
6. At the time of original filing, filing officer will return third copy as an acknowledgment. At a later time, secured party may date and sign Termination Legend and use third copy as a Termination Statement.

1. Debtor(s) (Last Name First) and address(es)

2. Secured Party(ies) and address(es)

3. This financing statement covers the following types (or items) of property.

For Filing Officer (Date, Time, Number, and Filing Office)

Assignee of Secured Party and Address

Proceeds and Products of Collateral are also covered.

File with: THE COUNTY CLERK _____ County, State of Oklahoma, under Uniform Commercial Code effective January 1, 1963. S.B.36

By: _____
Signature(s) of Debtor(s)

By: _____
Signature(s) of Secured Party(ies) or Assignee

(Form UCC-1 Approved by State Examiner & Inspector)

SOUTHWESTERN STATIONERY
OKLA. CITY, LAWTON, PONCA

(1) FILING OFFICER COPY-ALPHABETICAL
STANDARD FORM-UNIFORM COMMERCIAL CODE

ATTACHMENT C

OKLA. OPIN. ATTY. GEN. 70-261

at "regular meetings" exclusively, it is the opinion of the Attorney General that the State Board of Medical Examiners may neither cite licensees to appear nor take disciplinary action against a licensee at a special meeting.

We express no opinion concerning whether the Board could cite a licensee to appear and take disciplinary action against him following the calling of a "regular meeting" and at a subsequent adjourned meeting of that regular meeting within the same six months period where the cited licensee is provided the 30 day notice of hearing required in Section 503.

We also express no opinion concerning any actions which might be taken in regard to the emergency suspension of a license pursuant to Section 314(c) of the Administrative Procedures Act, 75 O.S. Supp. 1969, §§ 301-327.

WILLIAM M. BONNELL
Assistant Attorney General

No. 70-261

**RECORDING OF STATEMENTS CONCERNING REAL
ESTATE IN COUNTY SITUATED**

Financing statements, continuation statements, termination statements or assignments or releases of financing statements containing adequate legal descriptions of real estate should be accepted for recording and indexing in the tract indexes of the county wherein the real estate is situated even though such instruments may not be acknowledged.

To: John L. Clifton, District Attorney August 28, 1970

The Attorney General has had under consideration your recent letter in which you state:

"This is to request an opinion advising us whether Senate Bill No. 232 amending 12A O.S. 1961 § 2702 [9-401] has the effect of impliedly repealing 16 O.S. 26 to the extent that a Financing Statement, Continuation Statement, Termination Statement or Assignment or Release of a Financing Statement containing an adequate legal description shall be recorded by the County Clerk without being acknowledged in substantial compliance with Title 16."

Title 16 O.S. 1961, § 26, states:

"No deed, mortgage or other instrument affecting the real estate shall be received for record or recorded unless executed and acknowledged in substantial compliance with this chapter; and the recording of any such instrument not so executed and acknowledged shall not be effective for any such purpose."

O.S.L. 1970, ch. 246, § 7, provides:

"It shall be the duty of the county clerk to cause all such financing statements, termination statements, or assignments or releases of financing statements containing an adequate legal

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description to be recorded and indexed in the records of said office in the same place and manner as a mortgage on real estate or assignment or release thereof."

There is no requirement anywhere in the Oklahoma Statutes for instruments such as mentioned in Section 7, just quoted, to be acknowledged. To the extent that one statute requires deeds, mortgages and other instruments affecting real estate to be acknowledged and the other imposes the duty on county clerks to record certain Uniform Commercial Code instruments without requiring that said instruments be acknowledged, the two statutes may be in conflict.

Acknowledgment is a ceremonial wholly of statutory origin; it is unknown at common law. 1 Am.Jur.2d Acknowledgments, § 1. It being wholly statutory, the Legislature may require it, determine its form or dispense with it altogether as it sees fit.

The new statute is a part of the Uniform Commercial Code and as such is to be liberally construed and applied. This type of construction and application and the reasons for it are explained in the Code itself in 12A. O.S. 1961, § 1-102:

"(1) This Act shall be liberally construed and applied to promote its underlying purposes and policies.

"(2) Underlying purposes and policies of this Act are:

"(a) to simplify, clarify and modernize the law governing commercial transactions,

"(b) to permit the continued expansion of commercial practices through custom, usage and agreement of the parties,

(c) to make uniform the law among the various jurisdictions."

Sections of the Code other than the one under consideration here clearly express the idea that the Code is getting away from formal filing requisites. A good example is the provision pertaining to filing security agreements which would have been covered under chattel mortgage or conditional sales acts prior to the adoption of the Code. What now is required to be filed is not, as under chattel mortgage and conditional sales acts, the security agreement itself, but only a simple notice which may be filed before the security interest attaches or thereafter. Such chattel mortgages formerly had to be acknowledged or witnessed but this requirement has now been dispensed with under the Code.

We think it is clear it is the intent of the Legislature for the Uniform Commercial Code to be liberally construed and to the extent that it is necessary to carry out the expressed provisions of the Code, earlier, inconsistent statutes such as 16 O.S. 1961, § 26, supra, will be construed as being impliedly repealed. See *Poafbitty v. Skelly Oil Company*, Okl., 394 P.2d 515, 519 (1964) where the Court stated:

"Where there are two or more acts or provisions of law relating to the same subject, effect is to be given to both, if that be practicable, but, if a repugnancy exists between such provisions, the more recent act which is the latest expression of

the legislative will, will operate as a repeal of the former to the extent of the repugnancy."

It being the expressed intent of the Legislature to give the Code a liberal construction, such intent and general purpose should be given effect where possible. *State v. Oakes*, Okl., 281 P.2d 749 (1955).

It is therefore the opinion of the Attorney General that insofar as the provisions of 16 O.S. 1961, § 26 and O.S.L. 1970, ch. 246, may be in conflict, O.S.L. 1970, ch. 246, should prevail. Therefore county clerks should accept and make filings involving real estate under the Uniform Commercial Code even though such filings may not be acknowledged.

NORMAN CANNON
Assistant Attorney General

No. 70-262

DELINQUENT PERSONAL TAXES —
AUTHORITY OF COUNTY OFFICERS

(1) The Legislature having made it the duty of county treasurers in O.S.L. 1970, ch. 299, § 4, to issue tax warrants for the collection of delinquent personal taxes, county treasurers are now authorized to issue warrants for the collection of personal taxes that were delinquent prior to April 28, 1970. (2) County officers have only such authority as is granted them by the Legislature. Since there is now no specific statutory authority for sheriffs to levy and make due return of warrants for the collection of delinquent personal taxes, sheriffs do not have such authority.

To: John M. Rogers, State Examiner and Inspector October 7, 1970

The Attorney General has had under consideration your letter of August 12, 1970, in which you make the following inquiries:

"Question 1. Are county treasurers now authorized to issue warrants for the collection of personal taxes that were delinquent prior to April 28, 1970, the effective date of said House Bill 1740?

"Question 2. Is there now any authority of law for the sheriff to levy and make due return of warrants for the collection of delinquent personal taxes?

"Question 3. If you determine our question 2 in the affirmative, what fees, if any, should be charged by the sheriff in levying or returning any such warrants?"

You further state:

"Section 3 of said act contains the following language 'The provisions of this act shall not apply to taxes which became due or payable prior to the effective date of this act.'"

and,

"Section 4 of said act makes it the 'duty of the county

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ATTACHMENT D

OKLA. OPIN. ATTY. GEN. 63-249

May 24, 1963

RECEIVED IN CONFERENCE
MAY 24, 1963

Honorable David Hall
County Attorney
Tulsa, Oklahoma

ATTENTION: Mr. H. T. Leroux

RE: Opinion No. 63-249

Dear Mr. Hall:

The Attorney General is in receipt of a letter dated May 7, 1963, directed to our attention by Mr. H. T. Leroux of your office, a portion of which is as follows:

"We have received a request that we obtain an opinion from your office as to the validity of carbon signatures on financing statements under the new Uniform Commercial Code. It has been brought to our attention that although the Tulsa County Clerk, Mr. Clyde Winterringer, has been accepting these carbon copies, that the county clerks in some nearby counties have been refusing to accept any thing less than the original for filing.

" * * * we are of the opinion that a carbon copy of the original instrument made at the same time as the original would qualify as a duplicate original and should therefore be accepted for the purpose of filing under the Uniform Commercial Code. * * * "

In effect, you submit two questions for our consideration. They are (1) may a county clerk refuse to accept and file the carbon copy of a financing statement, which contains carbon signatures of the parties thereto, and (2) are carbon copies of the

Honorable David Hall - (2)
May 24, 1963

financing statement, containing carbon signatures of the parties thereto, valid under the Uniform Commercial Code?

Referring to your first question, please note the Attorney General's opinion dated April 23, 1963, directed to the Honorable Lewis Raba, County Attorney of Pawnee County, a copy of which is enclosed, wherein we stated the county clerk was required to accept and file a financing statement even though the property was not described in detail. We feel the law and reasoning in said opinion should be extended and applied to the accepting and filing by a county clerk of a carbon copy of the financing statement, containing carbon signatures thereon. The county clerk should accept and file financing statements without attempting to ascertain if same complies with the legal requirements of the Uniform Commercial Code. The validity or legal significance of a particular financing statement and/or the determination of whether same has complied with the Uniform Commercial Code is a matter to be determined by the courts when such issues are raised.

It is, therefore, the opinion of the Attorney General that your first question should be answered as follows: A carbon copy of a financing statement, even though said instrument contains carbon signatures of the parties thereto, if duly presented, should be accepted and filed by the county clerk.

As stated above, the validity or legal significance of a financing statement, containing carbon signatures thereon, is a matter to be determined by the courts when such issues are raised. Such issues will be determined in litigation wherein the rights of private individuals are in dispute. It is, therefore, the opinion of the Attorney General that your second question pertains to a matter which would not involve the official duties or responsibilities of the county clerk, but would involve the rights of private individuals. Therefore, such would not be the proper subject of an official opinion from this office.

Yours very truly,

FOR THE ATTORNEY GENERAL

LEE W. COOK
Assistant Attorney General

ENC:old
Enclosure

ATTACHMENT E

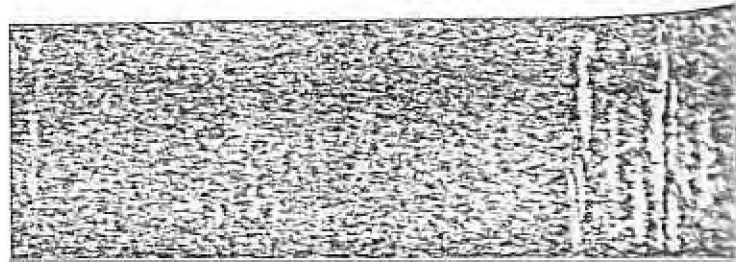
12A O.S. 1981 §§9-101 to 9-507

**ARTICLE 9.—SECURED TRANSACTIONS;
SALES OF ACCOUNTS AND
CHATTEL PAPER**

Article head amended by Laws 1981, c. 194, § 5

**PART 1. SHORT TITLE, APPLICABILITY
AND DEFINITIONS**

- | | |
|-------------|---|
| Sec. | |
| 9-101. | Short Title. |
| 9-102. | Policy and Subject Matter of Article. |
| 9-103. | Repealed. |
| 9-103.1. | Perfection of Security Interests in Multiple State Transactions. |
| 9-104. | Transactions Excluded From Article. |
| 9-105. | Definitions and Index of Definitions. |
| 9-106. | Definitions: "Account"; "General Intangibles". |
| 9-107. | Definitions: "Purchase Money Security Interest". |
| 9-108. | When After-Acquired Collateral Not Security for Antecedent Debt. |
| 9-109. | Classification of Goods; "Consumer Goods"; "Equipment"; "Farm Products"; "Inventory". |
| 9-110. | Sufficiency of Description. |
| 9-111. | Applicability of Bulk Transfer Laws. |
| 9-112. | Where Collateral Is Not Owned by Debtor. |
| 9-113. | Security Interests Arising Under Article on Sales. |
| 9-114. | Consignment. |



PART 2. VALIDITY OF SECURITY AGREEMENTS AND RIGHTS OF PARTIES THERETO

- Sec.
- 9-201. General Validity of Security Agreement.
- 9-202. Title to Collateral Immaterial.
- 9-203. Attachment and Enforceability of Security Interest; Proceeds, Formal Requisites.
- 9-204. After-Acquired Property; Future Advances.
- 9-205. Use or Disposition of Collateral Without Accounting Permissible.
- 9-206. Agreement Not to Assert Defenses Against Assignee; Modification of Sales Warranties Where Security Agreement Exists.
- 9-207. Rights and Duties When Collateral Is in Secured Party's Possession.
- 9-208. Request for Statement of Account or List of Collateral.

PART 3. RIGHTS OF THIRD PARTIES; PERFECTED AND UNPERFECTED SECURITY INTERESTS; RULES OF PRIORITY

- 9-301. Persons Who Take Priority Over Unperfected Security Interests; Right of "Lien Creditor".
- 9-302. When Filing Is Required to Perfect Security Interest—Security Interests to Which Filing Provisions of This Article Do Not Apply.
- 9-303. When Security Interest Is Perfected; Continuity of Perfection.
- 9-304. Perfection of Security Interest in Instruments, Documents, and Goods Covered by Documents; Perfection by Permissive Filing; Temporary Perfection Without Filing or Transfer of Possession.
- 9-305. When Possession by Secured Party Perfects Security Interest Without Filing.
- 9-306. "Proceeds"; Secured Party's Rights on Disposition of Collateral.
- 9-307. Protection of Buyers of Goods.
- 9-308. Purchase of Chattel Paper and Instruments.
- 9-309. Protection of Purchasers of Instrument and Documents.
- 9-310. Priority of Certain Liens Arising by Operation of Law.
- 9-311. Alienability of Debtor's Rights; Judicial Process.
- 9-312. Priorities Among Conflicting Security Interests in the Same Collateral.
- 9-313. Priority of Security Interests in Fixtures.
- 9-314. Accessions.
- 9-315. Priority When Goods Are Commingled or Processed.
- 9-316. Priority Subject to Subordination.
- 9-317. Secured Party Not Obligated on Contract of Debtor.
- 9-318. Defenses Against Assignee; Modification of Contract After Notification of Assignment; Term Prohibiting Assignment Ineffective; Identification and Proof of Assignment.

PART 4. FILING

- 9-401. Place of Filing; Erroneous Filing; Removal of Collateral.
- 9-401A. Statements Pertaining to Real Estate; Legal Description; Recording and Indexing; Fees.
- 9-402. Formal Requisites of Financing Statement; Amendments; Mortgage as Financing Statement.
- 9-403. Acts Constitute Filing; Term of Filing; Effect; Continuation Statement; Duty of Filing Officer; Fees.
- 9-404. Termination Statement.
- 9-405. Assignment of Security Interest; Fees; Duty of Filing Officer.
- 9-406. Release of Collateral; Duties of Filing Officer; Fees.
- 9-407. Information From Filing Officer.
- 9-408. Financing Statements Covering Consigned or Leased Goods.

PART 5. DEFAULT

- 9-501. Default; Procedure When Security Agreement Covers Both Real and Personal Property.
- 9-502. Collection Rights of Secured Party.
- 9-503. Secured Party's Right to Take Possession After Default.
- 9-504. Secured Party's Right to Dispose of Collateral After Default; Effect of Disposition.

Sec.

- 9-505. Compulsory Disposition of Collateral; Acceptance of the Collateral as Discharge of Obligation.
- 9-506. Debtor's Right to Redeem Collateral.
- 9-507. Secured Party's Liability for Failure to Comply with this Part.

PART 1. SHORT TITLE, APPLICABILITY AND DEFINITIONS

§ 9-101. Short Title

This article shall be known and may be cited as Uniform Commercial Code—Secured Transactions. Laws 1961, p. 162, § 9-101.

Assignments ⇨ 88.

Bailment ⇨ 22.

Factors ⇨ 47.

Life Estates ⇨ 3 et seq.

§ 9-102. Policy and Subject Matter of Article

(1) Except as otherwise provided in Section 9-104 on excluded transactions, this article applies:

(a) to any transaction, regardless of its form, which is intended to create a security interest in personal property or fixtures including goods, documents, instruments, general intangibles, chattel paper or accounts; and also

(b) to any sale of accounts or chattel paper.

(2) This article applies to security interests created by contract including pledge, assignment, chattel mortgage, chattel trust, trust deed, factor's lien, equipment trust, conditional sale, trust receipt, other lien or title retention contract and lease or consignment intended as security. This article does not apply to statutory liens except as provided in Section 9-310.

(3) The application of this article to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this article does not apply. Laws 1961, p. 162, § 9-102; Laws 1981, c. 194, § 6.

Chattel Mortgages ⇨ 3, 83.

Pledges ⇨ 3.

Sales ⇨ 452.

Law governing

Law of state where collateral is located at time of transaction is governing law without regard to possible contacts in other jurisdictions. *First Nat. Bank & Trust Co. of Vinita, Okl. v. Atlas Credit Corp.*, C.A.Okla., 417 F.2d 1081.

Subrogation

Uniform Commercial Code does not abrogate, modify, affect or abridge equitable doctrine of subrogation, and a surety is not required to file under the Code to preserve its priority under equitable right of subrogation. *Mid-Continent Cas. Co. v. First Nat. Bank & Trust Co. of Chickasha, Okla.*, 531 P.2d 1370 (1975).

§ 9-103. Repealed by Laws 1981, c. 194, § 46.

From:

Comp.Laws 1887, §§ 4380 to 4382.

St.1890, §§ 3543 to 3545.

St.1893, §§ 3271 to 3273.

St.1903, §§ 3579 to 3581.

Comp.Laws 1909, §§ 4423 to 4425.

R.L.1910, §§ 4032 to 4034.

Comp.St.1921, §§ 7651 to 7653.

Laws 1935, p. 230, § 3.
 Laws 1961, p. 162, § 9 103.
 O.S. 1971, § 9 - 103.
 See, now, § 9 103.1 of this title.

§ 9-103.1. Perfection of Security Interests in Multiple State Transactions

(1) Documents, Instruments and Ordinary Goods.

- (a) This subsection applies to documents and instruments and to goods other than those covered by a certificate of title described in subsection (2) of this section, mobile goods described in subsection (3) of this section, and minerals described in subsection (5) of this section.
- (b) Except as otherwise provided in this subsection, perfection and the effect of perfection or nonperfection of a security interest in collateral are governed by the law of the jurisdiction where the collateral is when the last event occurs on which is based the assertion that the security interest is perfected or unperfected.
- (c) If the parties to a transaction creating a purchase money security interest in goods in one jurisdiction understand at the time that the security interest attaches that the goods will be kept in another jurisdiction, then the law of the other jurisdiction governs the perfection and the effect of perfection or nonperfection of the security interest from the time it attaches until thirty (30) days after the debtor receives possession of the goods and thereafter if the goods are taken to the other jurisdiction before the end of the thirty-day period.
- (d) When collateral is brought into and kept in this state while subject to a security interest perfected under the law of the jurisdiction from which the collateral was removed, the security interest remains perfected; but if action is required by Part 3 of this article to perfect the security interest:
 - (i) if the action is not taken before the expiration of the period of perfection in the other jurisdiction or the end of four (4) months after the collateral is brought into this state, whichever period first expires, the security interest becomes unperfected at the end of that period and is thereafter deemed to have been unperfected as against a person who became a purchaser after removal, or
 - (ii) if the action is taken before the expiration of the period specified in subparagraph (i), the security interest continues perfected thereafter.

(2) Certificate of Title.

- (a) This subsection applies to goods covered by a certificate of title issued under a statute of

this state or of another jurisdiction under the law of which indication or delivery for indication of a security interest on the certificate is required as a condition of perfection.

- (b) Except as otherwise provided in this subsection, perfection and the effect of perfection or nonperfection of the security interest are governed by the law, including the conflict of laws rules, of the jurisdiction issuing the certificate until four (4) months after the goods are removed from that jurisdiction and thereafter until the goods are registered in another jurisdiction, but in any event not beyond surrender of the certificate. After the expiration of that period, the goods are not covered by the certificate of title within the meaning of this section.
 - (c) Except with respect to the rights of a buyer described in the next paragraph, a security interest, perfected in another jurisdiction otherwise than by notation on a certificate of title, in goods brought into this state and thereafter covered by a certificate of title issued by this state is subject to the rules stated in paragraph (d) of subsection (1) of this section.
 - (d) If goods are brought into this state while a security interest therein is perfected in any manner under the law of the jurisdiction from which the goods are removed, and a certificate of title is issued by this state and the certificate does not show that the goods are subject to the security interest or that they may be subject to security interests not shown on the certificate, the security interest is subordinate to the rights of a buyer of the goods who is not in the business of selling goods of that kind to the extent that he gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest.
- #### (3) Accounts, General Intangibles and Mobile Goods.
- (a) This subsection applies to accounts, other than an account described in subsection (5) on minerals, and general intangibles and to goods which are mobile and which are of a type normally used in more than one jurisdiction, such as motor vehicles, trailers, rolling stock, airplanes, shipping containers, road building and construction machinery and commercial harvesting machinery and the like, if the goods are equipment or are inventory leased or held for lease by the debtor to others and are not covered by a certificate of title described in subsection (2) of this section.
 - (b) The law, including the conflict of laws rules, of the jurisdiction in which the debtor is located governs the perfection and the ef-

fect of perfection or nonperfection of the security interest.

- (c) If, however, the debtor is located in a jurisdiction which is not a part of the United States and which does not provide for perfection of the security interest by filing or recording in that jurisdiction, the law of the jurisdiction in the United States in which the debtor has its major executive office in the United States governs the perfection and the effect of perfection or nonperfection of the security interest through filing. In the alternative, if the debtor is located in a jurisdiction which is not a part of the United States or Canada and the collateral is accounts or general intangibles for money due or to become due, the security interest may be perfected by notification to the account debtor. As used in this paragraph, "United States" includes its territories and possessions and the Commonwealth of Puerto Rico.
- (d) A debtor shall be deemed located at his place of business if he has one, at his chief executive office if he has more than one place of business; otherwise, at his residence. If, however, the debtor is a foreign air carrier under the Federal Aviation Act of 1958, as amended, it shall be deemed located at the designated office of the agent upon whom service of process may be made on behalf of the foreign air carrier.
- (e) A security interest perfected under the law of the jurisdiction of the location of the debtor is perfected until the expiration of four (4) months after a change of the debtor's location to another jurisdiction or until perfection would have ceased by the law of the first jurisdiction whichever period first expires. Unless perfected in the new jurisdiction before the end of that period, it becomes unperfected thereafter and is deemed to have been unperfected as against a person who became a purchaser after the change.

(4) Chattel Paper.

The rules stated for goods in subsection (1) apply to a possessory security interest in chattel paper. The rules stated for accounts in subsection (3) apply to a nonpossessory security interest in chattel paper, but the security interest may not be perfected by notification to the account debtor.

(5) Minerals.

Perfection and the effect of perfection or nonperfection of a security interest which is created by a debtor who has an interest in minerals or the like, including oil and gas, before extraction and which attaches thereto as extracted, or which attaches to an account resulting from the sale thereof at the

wellhead or minehead are governed by the law, including the conflict of laws rules, of the jurisdiction wherein the wellhead or minehead is located. Laws 1981, c. 194, § 7.

Secured Transactions ⇨ 81.

§ 9-104. Transactions Excluded From Article

This article does not apply:

- (a) to a security interest subject to any statute of the United States to the extent that such statute governs the rights of parties to and third parties affected by transactions in particular types of property; or
- (b) to a landlord's lien; or
- (c) to a lien given by statute or other rule of law for services or materials except as provided in Section 9-310 on priority of such liens; or
- (d) to a transfer of a claim for wages, salary or other compensation of an employee; or
- (e) to a transfer by a government or governmental subdivision or agency; or
- (f) to a sale of accounts or chattel paper as part of a sale of the business out of which they arose, or an assignment of accounts or chattel paper which is for the purpose of collection only, or a transfer of a right to payment under a contract to an assignee who is also to do the performance under the contract or a transfer of a single account to an assignee in whole or partial satisfaction of a preexisting indebtedness; or
- (g) to a transfer of an interest in or claim in or under any policy of insurance, except as provided with respect to proceeds (Section 9-306) and priorities in proceeds (Section 9-312); or
- (h) to a right represented by a judgment, other than a judgment taken on a right to payment which was collateral; or
- (i) to any right of setoff; or
- (j) except to the extent that provision is made for fixtures in Section 9-313, to the creation or transfer of an interest in or lien on real estate, including a lease or rents thereunder; or
- (k) to a transfer in whole or in part of any claim arising out of tort; or
- (l) to a transfer of an interest in any deposit account (subsection (1) of Section 9-105), except as provided with respect to proceeds (Section 9-306) and priorities in proceeds (Section 9-312).

Laws 1961, p. 163, § 9-104; Laws 1981, c. 194, § 8.

Chattel Mortgages ⇨ 3, 83.

Pledges ⇨ 3.

Sales ⇨ 452.

§ 9-105. Definitions and Index of Definitions

(1) In this article unless the context otherwise requires:

- (a) "Account debtor" means the person who is obligated on an account, chattel paper or general intangible;
- (b) "Chattel paper" means a writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods, but a charter or other contract involving the use or hire of a vessel is not chattel paper. When a transaction is evidenced both by such a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper;
- (c) "Collateral" means the property subject to a security interest and includes accounts and chattel paper which have been sold;
- (d) "Debtor" means the person who owes payment or other performance of the obligation secured, whether or not he owns or has rights in the collateral, and includes the seller of accounts or chattel paper. Where the debtor and the owner of the collateral are not the same person, the term "debtor" means the owner of the collateral in any provision of the article dealing with the collateral, the obligor in any provision dealing with the obligation, and may include both where the context so requires;
- (e) "Deposit account" means a demand, time, savings, passbook or like account maintained with a bank, savings and loan association, credit union or like organization, other than an account evidenced by a certificate of deposit;
- (f) "Document" means document of title as defined in the general definitions of Article 1 (Section 1-201), and a receipt of the kind described in subsection (2) of Section 7-201;
- (g) "Encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests;
- (h) "Goods" includes all things which are movable at the time the security interest attaches or which are fixtures (Section 9-313), but does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction;
- (i) "Instrument" means a negotiable instrument, defined in Section 3-104, or a security defined in Section 8-102, or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which is in ordinary course of business transferred by delivery with any necessary endorsement or assignment;

- (j) "Mortgage" means a consensual interest created by a real estate mortgage, a trust deed on real estate, or the like;
- (k) An advance is made "pursuant to commitment" if the secured party has bound himself to make it, whether or not a subsequent event of default or other event not within his control has relieved or may relieve him from his obligation;
- (l) "Security agreement" means an agreement which creates or provides for a security interest;
- (m) "Secured party" means a lender, seller or other person in whose favor there is a security interest, including a person to whom accounts or chattel paper have been sold. When the holders of obligations issued under an indenture of trust, equipment trust agreement or the like are represented by a trustee or other person, the representative is the secured party; and
- (n) "Transmitting utility" means any person primarily engaged in the railroad, street railway or trolley bus business, the electric or electronics communications transmission business, the transmission of goods by pipeline, or the transmission or the production and transmission of electricity, steam, gas or water, or the provision of sewer service.

(2) Other definitions applying to this article and the sections in which they appear are:

- "Account". Section 9-106.
- "Attach". Section 9-203.
- "Construction mortgage". Section 9-313(1).
- "Consumer goods". Section 9-109(1).
- "Equipment". Section 9-109(2).
- "Farm products". Section 9-109(3).
- "Fixture". Section 9-313.
- "Fixture filing". Section 9-313.
- "General intangibles". Section 9-106.
- "Inventory". Section 9-109(4).
- "Lien creditor". Section 9-301(3).
- "Proceeds". Section 9-306(1).
- "Purchase money security interest". Section 9-107.
- "United States". Section 7 of this act.¹

(3) The following definitions in other articles apply to this article:

- "Check". Section 3-104.
- "Contract for sale". Section 2-106.
- "Holder in due course". Section 3-302.
- "Note". Section 3-104.
- "Sale". Section 2-106.

(4) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

Laws 1961, p. 163, § 9-105; Laws 1981, c. 194, § 9.

¹ Section 9-103.1 of this title.

Chattel Mortgages ⇨ 1 et seq.

Pledges ⇨ 1.

Sales ⇨ 450.

"Goods"

In re McClain, C.A.Okl., 447 F.2d 241 (1971), certiorari denied 92 S.Ct. 943, 405 U.S. 918, 30 L.Ed.2d 788.

§ 9-106. Definitions: "Account"; "General Intangibles"

"Account" means any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper, whether or not it has been earned by performance.

"General intangibles" means any personal property, including things in action, other than goods, accounts, chattel paper, documents, instruments and money. All rights to payment earned or unearned under a charter or other contract involving the use or hire of a vessel and all rights incident to the charter or contract are accounts.

Laws 1961, p. 164, § 9-106; Laws 1981, c. 194, § 10.

Chattel Mortgages ⇨ 1 et seq.

Pledges ⇨ 1.

Sales ⇨ 450.

Construction and application

Utica Nat. Bank and Trust Co. v. Associated Producers Co., Okl., 622 P.2d 1061 (1980).

Under Uniform Commercial Code, accounts receivable and contract rights cannot be classified as goods; goods include only consumer goods, equipment, farm products and inventory. Mitchell v. Shepherd Mall State Bank, D.C.Okl., 324 F.Supp. 1029, affirmed 458 F.2d 700.

§ 9-107. Definition: "Purchase Money Security Interest"

A security interest is a "purchase money security interest" to the extent that it is

- (a) taken or retained by the seller of the collateral to secure all or part of its price; or
- (b) taken by a person who by making advances or incurring an obligation gives value to enable the debtor to acquire rights in or the use of collateral if such value is in fact so used.

Laws 1961, p. 165, § 9-107.

Chattel Mortgages ⇨ 1 et seq.

Pledges ⇨ 1.

Sales ⇨ 450.

§ 9-108. When After-Acquired Collateral Not Security for Antecedent Debt

Where a secured party makes an advance, incurs an obligation, releases a perfected security interest, or otherwise gives new value which is to be secured in whole or in part by after-acquired property his security interest in the after-acquired collateral shall be deemed to be taken for new value and not as security for an antecedent debt if the debtor acquires his rights in such collateral either in the ordinary course of his business or under a contract of purchase made pursuant to the security agreement within a reasonable time after new value is given.

Laws 1961, p. 165, § 9-108.

Chattel Mortgages ⇨ 124.

Pledges ⇨ 19, 20.

Sales ⇨ 467.

§ 9-109. Classification of Goods; "Consumer Goods"; "Equipment"; "Farm Products"; "Inventory"

Goods are

(1) "consumer goods" if they are used or bought for use primarily for personal, family or household purposes;

(2) "equipment" if they are used or bought for use primarily in business (including farming or a profession) or by a debtor who is a nonprofit organization or a governmental subdivision or agency or if the goods are not included in the definitions of inventory, farm products or consumer goods;

(3) "farm products" if they are crops or livestock or supplies used or produced in farming operations or if they are products of crops or livestock in their unmanufactured states (such as ginned cotton, wool-clip, maple syrup, milk and eggs), and if they are in the possession of a debtor engaged in raising, fattening, grazing or other farming operations. If goods are farm products they are neither equipment nor inventory;

(4) "inventory" if they are held by a person who holds them for sale or lease or to be furnished under contracts of service or if he has so furnished them, or if they are raw materials, work in process or materials used or consumed in a business. Inventory of a person is not to be classified as his equipment. Laws 1961, p. 165, § 9-109.

Chattel Mortgages ⇨ 11 et seq., 116 et seq.

Pledges ⇨ 20.

Sales ⇨ 467.

Construction and application

Under Uniform Commercial Code, accounts receivable and contract rights cannot be classified as goods; goods include only consumer goods, equipment, farm products and inventory. Mitchell v. Shepherd Mall State Bank, D.C.Okl., 324 F.Supp. 1029, affirmed 458 F.2d 700.

Under Uniform Commercial Code, classification is not ordinarily a matter of intent of parties but a question of law applied to facts as they exist. Mitchell v. Shepherd Mall State Bank, D.C.Okl., 324 F.Supp. 1029, affirmed 458 F.2d 700.

Under Uniform Commercial Code, classifications are not intended to describe or create security interest. Mitchell v. Shepherd Mall State Bank, D.C.Okl., 324 F.Supp. 1029, affirmed 458 F.2d 700.

Bankruptcy

In re McClain, C.A.Okl., 447 F.2d 241 (1971), certiorari denied 92 S.Ct. 943, 405 U.S. 918, 30 L.Ed.2d 788.

Equipment

National Bank of Commerce v. First Nat. Bank & Trust Co. of Tulsa, Okl., 446 P.2d 277.

Inventory

National Bank of Commerce v. First Nat. Bank & Trust Co. of Tulsa, Okl., 446 P.2d 277.

§ 9-110. Sufficiency of Description

For the purposes of this article any description of personal property or real estate is sufficient whether or not it is specific if it reasonably identifies what is described.

Laws 1961, p. 165, § 9-110.

Chattel Mortgages ⇨ 47.

Pledges ⇨ 18.

Sales ⇨ 461.

§ 9-111. Applicability of Bulk Transfer Laws

The creation of a security interest is not a bulk transfer under Article 6 (see Section 6-103).

Laws 1961, p. 165, § 9-111.

Fraudulent Conveyances ⇨ 47.

§ 9-112. Where Collateral is Not Owned by Debtor

Unless otherwise agreed, when a secured party knows that collateral is owned by a person who is not the debtor, the owner of the collateral is entitled to receive from the secured party any surplus under Section 9-502(2) or under Section 9-504(1), and is not liable for the debt or for any deficiency after resale, and he has the same right as the debtor

- (a) to receive statements under Section 9-208;
- (b) to receive notice of and to object to a secured party's proposal to retain the collateral in satisfaction of the indebtedness under Section 9-505;
- (c) to redeem the collateral under Section 9-506;
- (d) to obtain injunctive or other relief under Section 9-507(1); and
- (e) to recover losses caused to him under Section 9-208(2).

Laws 1961, p. 165, § 9-112.

Sales ⇨ 452.

§ 9-113. Security Interests Arising Under Article on Sales

A security interest arising solely under the article on Sales (Article 2) is subject to the provisions of this article except that to the extent that and so long as the debtor does not have or does not lawfully obtain possession of the goods

- (a) no security agreement is necessary to make the security interest enforceable; and
- (b) no filing is required to perfect the security interest; and
- (c) the rights of the secured party on default by the debtor are governed by the article on Sales (Article 2).

Laws 1961, p. 165, § 9-113.

Chattel Mortgages ⇨ 30 et seq.

Pledges ⇨ 8.

Sales ⇨ 472.

§ 9-114. Consignment

(1) A person who delivers goods under a consignment which is not a security interest and who would be required to file under this article by paragraph (3)(c) of Section 2-326 has priority over a secured party who is or becomes a creditor of the consignee and who would have a perfected security interest in the goods if they were the property of the consignee, and also has priority with respect to identifiable cash proceeds received on or before delivery of the goods to a buyer, if:

- (a) the consignor complies with the filing provision of the article on Sales with respect to consignments (paragraph (3)(c) of Section 2-326) before the consignee receives possession of the goods; and
- (b) the consignor gives notification in writing to the holder of the security interest if the holder has filed a financing statement covering the same types of goods before the date of the filing made by the consignor; and
- (c) the holder of the security interest receives the notification within five (5) years before the consignee receives possession of the goods; and
- (d) the notification states that the consignor expects to deliver goods on consignment to the consignee, describing the goods by item or type.

(2) In the case of a consignment which is not a security interest and in which the requirements of the preceding subsection have not been met, a person who delivers goods to another is subordinate to a person who would have a perfected security interest in the goods if they were the property of the debtor.

Laws 1981, c. 194, § 11.

Secured Transactions ⇨ 161.

PART 2. VALIDITY OF SECURITY AGREEMENTS AND RIGHTS OF PARTIES THERETO**§ 9-201. General Validity of Security Agreement**

Except as otherwise provided by this act a security agreement is effective according to its terms between the parties, against purchasers of the collateral and against creditors. Nothing in this article validates any charge or practice illegal under any statute or regulation thereunder governing usury, small loans, retail installment sales, or the like, or extends the application of any such statute or regulation to any transaction not otherwise subject thereto.

Laws 1961, p. 166, § 9-201.

Chattel Mortgages ⇨ 73 et seq.

Pledges ⇨ 1.

Sales ⇨ 459.

§ 9-202. Title to Collateral Immaterial

Each provision of this article with regard to rights, obligations and remedies applies whether title to collateral is in the secured party or in the debtor.

Laws 1961, p. 166, § 9-202.

Chattel Mortgages ⇨ 129.

Pledges ⇨ 6.

Sales ⇨ 459.

§ 9-203. Attachment and Enforceability of Security Interest; Proceeds, Formal Requisites

(1) Subject to the provisions of Section 4-208 on the security interest of a collecting bank and Section 9-113 on a security interest arising under the article on Sales, a security interest is not enforceable

against the debtor or third parties with respect to the collateral and does not attach unless:

- (a) the collateral is in the possession of the secured party pursuant to agreement, or the debtor has signed a security agreement which contains a description of the collateral, and in addition, when the security interest covers crops growing or to be grown or timber to be cut, a description of the land concerned; and
- (b) value has been given; and
- (c) the debtor has rights in the collateral.

(2) A security interest attaches when it becomes enforceable against the debtor with respect to the collateral. Attachment occurs as soon as all of the events specified in subsection (1) have taken place unless explicit agreement postpones the time of attaching.

(3) Unless otherwise agreed, a security agreement gives the secured party the rights to proceeds provided by Section 9-306.

(4) A transaction, although subject to this article, may also be subject to the Consumer Credit Code, to the extent applicable, and in the case of conflict between the provisions of this article and any such statute, the provisions of such statute control. Failure to comply with any applicable statute has only the effect which is specified therein.

Laws 1961, p. 166, § 9-203; Laws 1981, c. 194, § 12. Construction and application

In re Dean & Jean Fashions, Inc., D.C.Okla., 329 F.Supp. 663 (1971); Mitchell v. Shepherd Mall State Bank, D.C.Okla., 324 F.Supp. 1029, affirmed 458 F.2d 700; Wilmot v. Central Oklahoma Gravel Corp., Okla.App., 620 P.2d 1350 (1980).

§ 9-204. After-Acquired Property; Future Advances

(1) Except as provided in subsection (2) of this section a security agreement may provide that any or all obligations covered by the security agreement are to be secured by after-acquired collateral.

(2) No security interest attaches under an after-acquired property clause to consumer goods other than accessions (Section 9-314) when given as additional security unless the debtor acquires rights in them within ten (10) days after the secured party gives value.

(3) Obligations covered by a security agreement may include future advances or other value whether or not the advances or value are given pursuant to commitment (subsection (1) of Section 9-105).

Laws 1961, p. 166, § 9-204; Laws 1981, c. 194, § 13.

Chattel Mortgages ⇨ 41 et seq.

Pledges ⇨ 1 et seq.

Sales ⇨ 450.

Future advances

Security Nat. Bank & Trust Co. of Norman v. Dentsply Professional Plan, Okla., 617 P.2d 1340 (1980).

§ 9-205. Use or Disposition of Collateral Without Accounting Permissible

A security interest is not invalid or fraudulent against creditors by reason of liberty in the debtor

to use, commingle or dispose of all or part of the collateral, including returned or repossessed goods, or to collect or compromise accounts or chattel paper, or to accept the return of goods or make repossessions, or to use, commingle or dispose of proceeds, or by reason of the failure of the secured party to require the debtor to account for proceeds or replace collateral. This section does not relax the requirements of possession where perfection of a security interest depends upon possession of the collateral by the secured party or by a bailee.

Laws 1961, p. 167, § 9-205; Laws 1981, c. 194, § 14.

Chattel Mortgages ⇨ 73.

Fraudulent Conveyances ⇨ 47, 131 et seq.

Pledges ⇨ 26 et seq.

Sales ⇨ 464.

§ 9-206. Agreement Not to Assert Defenses Against Assignee; Modification of Sales Warranties Where Security Agreement Exists

(1) Subject to any statute or decision which establishes a different rule for buyers or lessees of consumer goods, an agreement by a buyer or lessee that he will not assert against an assignee any claim or defense which he may have against the seller or lessor is enforceable by an assignee who takes his assignment for value, in good faith and without notice of a claim or defense, except as to defenses of a type which may be asserted against a holder in due course of a negotiable instrument under the article on Commercial Paper (Article 3). A buyer who as part of one transaction signs both a negotiable instrument and a security agreement makes such an agreement.

(2) When a seller retains a purchase money security interest in goods the article on Sales (Article 2) governs the sale and any disclaimer, limitation or modification of the seller's warranties.

Laws 1961, p. 167, § 9-206; Laws 1981, c. 194, § 15.

Sales ⇨ 226 et seq.

§ 9-207. Rights and Duties When Collateral is in Secured Party's Possession

(1) A secured party must use reasonable care in the custody and preservation of collateral in his possession. In the case of an instrument or chattel paper reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

(2) Unless otherwise agreed, when collateral is in the secured party's possession

(a) reasonable expenses (including the cost of any insurance and payment of taxes or other charges) incurred in the custody, preservation, use or operation of the collateral are chargeable to the debtor and are secured by the collateral;

(b) the risk of accidental loss or damage is on the debtor to the extent of any deficiency in any effective insurance coverage;

- (c) the secured party may hold as additional security any increase or profits (except money) received from the collateral, but money so received, unless remitted to the debtor, shall be applied in reduction of the secured obligation;
- (d) the secured party must keep the collateral identifiable but fungible collateral may be commingled;
- (e) the secured party may repledge the collateral upon terms which do not impair the debtor's right to redeem it.

(3) A secured party is liable for any loss caused by his failure to meet any obligation imposed by the preceding subsections but does not lose his security interest.

(4) A secured party may use or operate the collateral for the purpose of preserving the collateral or its value or pursuant to the order of a court of appropriate jurisdiction or, except in the case of consumer goods, in the manner and to the extent provided in the security agreement.

Laws 1961, p. 167, § 9-207.

Chattel Mortgages ⇨ 159 et seq.
Pledges ⇨ 26 et seq.
Sales ⇨ 467.

Preservation of value

Reed v. Central Nat. Bank of Alva, C.A.Okla., 421 F.2d 113.

§ 9-208. Request for Statement of Account or List of Collateral

(1) A debtor may sign a statement indicating what he believes to be the aggregate amount of unpaid indebtedness as of a specified date and may send it to the secured party with a request that the statement be approved or corrected and returned to the debtor. When the security agreement or any other record kept by the secured party identifies the collateral a debtor may similarly request the secured party to approve or correct a list of the collateral.

(2) The secured party must comply with such a request within two (2) weeks after receipt by sending a written correction or approval. If the secured party claims a security interest in all of a particular type of collateral owned by the debtor he may indicate that fact in his reply and need not approve or correct an itemized list of such collateral. If the secured party without reasonable excuse fails to comply he is liable for any loss caused to the debtor thereby; and if the debtor has properly included in his request a good faith statement of the obligation or a list of the collateral or both the secured party may claim a security interest only as shown in the statement against persons misled by his failure to comply. If he no longer has an interest in the obligation or collateral at the time the request is received he must disclose the name and address of any successor in interest known to him and he is liable for any loss caused to the debtor as a result of failure to disclose. A successor in interest is not

subject to this section until a request is received by him.

(3) A debtor is entitled to such a statement once every six (6) months without charge. The secured party may require payment of a charge not exceeding Ten Dollars (\$10.00) for each additional statement furnished.

Laws 1961, p. 168, § 9-208.

Chattel Mortgages ⇨ 116 et seq.
Pledges ⇨ 44 et seq.
Sales ⇨ 467.

PART 8. RIGHTS OF THIRD PARTIES; PERFECTED AND UNPERFECTED SECURITY INTERESTS; RULES OF PRIORITY

§ 9-301. Persons Who Take Priority Over Unperfected Security Interests; Right of "Lien Creditor"

(1) Except as otherwise provided in subsection (2) of this section, an unperfected security interest is subordinate to the rights of:

- (a) persons entitled to priority under Section 9-312;
- (b) a person who becomes a lien creditor before the security interest is perfected;
- (c) in the case of goods, instruments, documents, and chattel paper, a person who is not a secured party and who is a transferee in bulk or other buyer not in ordinary course of business, or is a buyer of farm products in the ordinary course of business, to the extent that he gives value and receives delivery of the collateral without knowledge of the security interest and before it is perfected; or
- (d) in the case of accounts and general intangibles, a person who is not a secured party and who is a transferee to the extent that he gives value without knowledge of the security interest and before it is perfected.

(2) If the secured party files with respect to a purchase money security interest before or within ten (10) days after the debtor receives possession of the collateral, he takes priority over the rights of a transferee in bulk or of a lien creditor which arise between the time the security interest attaches and the time of filing.

(3) A "lien creditor" means a creditor who has acquired a lien on the property involved by attachment, levy or the like and includes an assignee for benefit of creditors from the time of assignment, and a trustee in bankruptcy from the date of the filing of the petition or a receiver in equity from the time of appointment.

(4) A person who becomes a lien creditor while a security interest is perfected takes subject to the security interest only to the extent that it secures advances made before he becomes a lien creditor or within forty-five (45) days thereafter or is made without knowledge of the lien or pursuant to a

commitment entered into without knowledge of the lien.

Laws 1961, p. 168, § 9-301; Laws 1981, c. 194, § 16.

Chattel Mortgages ⇨ 137 et seq.

Pledges ⇨ 23.

Sales ⇨ 474.

Construction and application

In re McClain, C.A.Okl., 447 F.2d 241 (1971), certiorari denied 92 S.Ct. 943, 405 U.S. 918, 80 L.Ed.2d 788; Agristor Credit Corp. v. Unruh, Okl., 571 P.2d 1220 (1977).

Bankruptcy

In re McClain, C.A.Okl., 447 F.2d 241 (1971), certiorari denied 92 S.Ct. 943, 405 U.S. 918, 80 L.Ed.2d 788.

§ 9-302. When Filing is Required to Perfect Security Interest—Security Interests to Which Filing Provisions of This Article Do Not Apply

(1) A financing statement must be filed to perfect all security interests except the following:

- (a) a security interest in collateral in possession of the secured party under Section 9-305;
- (b) a security interest temporarily perfected in instruments or documents without delivery under Section 9-304 or in proceeds for a ten-day period under Section 9-306;
- (c) a security interest created by an assignment of a beneficial interest in a trust or a decedent's estate;
- (d) an assignment of accounts which does not, alone or in conjunction with other assignments to the same assignee, transfer a significant part of the outstanding accounts of the assignor;
- (e) a security interest of a collecting bank (Section 4-208) or arising under the article on Sales (see Section 9-113) or covered in subsection (3) of this section; or
- (f) an assignment for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee thereunder.

(2) If a secured party assigns a perfected security interest, no filing under this article is required in order to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

(3) The filing of a financing statement otherwise required by this article is not necessary or effective to perfect a security interest in property subject to:

- (a) a statute or treaty of the United States which provides for a national or international registration or a national or international certificate of title or which specifies a place of filing different from that specified in this article for filing of the security interest; or
- (b) a statute of this state which provides for central filing of, or which requires indication or delivery for indication on a certificate of title of, such security interests in such property; but during any period in which collateral is inventory held for sale by a person

who is in the business of selling goods of that kind, the filing provisions of this article (Part 4) apply to a security interest in that collateral created by him as debtor; or

- (c) a certificate of title statute of another jurisdiction under the law of which delivery for or indication of a security interest on the certificate is required as a condition of perfection (subsection (2) of Section 7 of this act).

(4) Compliance with a statute or treaty described in subsection (3) of this section is equivalent to the filing of a financing statement under this article, and a security interest in property subject to the statute or treaty can be perfected only by compliance therewith except as provided in Section 7 of this act¹ on multiple state transactions. Duration and renewal of perfection of a security interest perfected by compliance with the statute or treaty are governed by the provisions of the statute or treaty; in other respects the security interest is subject to this article.

Laws 1961, p. 169, § 9-302; Laws 1977, c. 223, § 1, eff. July 1, 1978; Laws 1978, c. 135, § 1, eff. July 1, 1979; Laws 1981, c. 194, § 17.

¹ Section 9-103.1 of this title.

Chattel Mortgages ⇨ 144 et seq.

Pledges ⇨ 23.

Sales ⇨ 472(2), 474(2).

§ 9-303. When Security Interest is Perfected; Continuity of Perfection

(1) A security interest is perfected when it has attached and when all of the applicable steps required for perfection have been taken. Such steps are specified in Sections 9-302, 9-304, 9-305 and 9-306. If such steps are taken before the security interest attaches, it is perfected at the time when it attaches.

(2) If a security interest is originally perfected in any way permitted under this article and is subsequently perfected in some other way under this article, without an intermediate period when it was unperfected, the security interest shall be deemed to be perfected continuously for the purposes of this article.

Laws 1961, p. 169, § 9-303.

Chattel Mortgages ⇨ 133.

Pledges ⇨ 22.

Sales ⇨ 472 to 474.

Construction and application

Security State Bank of Wewoka v. Dooley, Okl.App., 604 P.2d 153 (1979); Morton Booth Co. v. Tiara Furniture, Inc., Okl., 564 P.2d 210 (1977).

§ 9-304. Perfection of Security Interest in Instruments, Documents and Goods Covered by Documents; Perfection by Permissive Filing; Temporary Perfection Without Filing or Transfer of Possession

(1) A security interest in chattel paper or negotiable documents may be perfected by filing. A securi-

ty interest in money or instruments, other than instruments which constitute part of chattel paper, can be perfected only by the secured party's taking possession, except as provided in subsections (4) and (5) of this section and subsections (2) and (3) of Section 9-306 on proceeds.

(2) During the period that goods are in the possession of the issuer of a negotiable document therefor, a security interest in the goods is perfected by perfecting a security interest in the document, and any security interest in the goods otherwise perfected during such period is subject thereto.

(3) A security interest in goods in the possession of a bailee other than one who has issued a negotiable document therefor is perfected by issuance of a document in the name of the secured party or by the bailee's receipt of notification of the secured party's interest or by filing as to the goods.

(4) A security interest in instruments or negotiable documents is perfected without filing or the taking of possession for a period of twenty-one (21) days from the time it attaches to the extent that it arises for new value given under a written security agreement.

(5) A security interest remains perfected for a period of twenty-one (21) days without filing where a secured party having a perfected security interest in an instrument, a negotiable document or goods in possession of a bailee other than one who has issued a negotiable document therefor

(a) makes available to the debtor the goods or documents representing the goods for the purpose of ultimate sale or exchange or for the purpose of loading, unloading, storing, shipping, transshipping, manufacturing, processing or otherwise dealing with them in a manner preliminary to their sale or exchange, between but priority between conflicting security interests in the goods is subject to subsection (3) of Section 9-312; or

(b) delivers the instrument to the debtor for the purpose of ultimate sale or exchange or of presentation, collection, renewal or registration of transfer.

(6) After the twenty-one-day period in subsections (4) and (5) of this section perfection depends upon compliance with applicable provisions of this article.

Laws 1961, p. 169, § 9-304; Laws 1981, c. 194, § 18.
Chattel Mortgages ⇨ 133 et seq.
Pledges ⇨ 22.
Sales ⇨ 472-474.

§ 9-305. When Possession by Secured Party Perfects Security Interest Without Filing

A security interest in letters of credit and advices of credit (subsection (2)(a) of Section 5-116), goods, instruments, money, negotiable documents or chattel paper may be perfected by the secured party's taking possession of the collateral. If such collateral

other than goods covered by a negotiable document is held by a bailee, the secured party is deemed to have possession from the time the bailee receives notification of the secured party's interest. A security interest is perfected by possession from the time possession is taken without relation back and continues only so long as possession is retained, unless otherwise specified in this article. The security interest may be otherwise perfected as provided in this article before or after the period of possession by the secured party.

Laws 1961, p. 170, § 9-305; Laws 1981, c. 194, § 19.
Chattel Mortgages ⇨ 133.
Pledges ⇨ 22.
Sales ⇨ 472 et seq.

Construction and application

O'Dell v. Kunkel's, Inc., Okl., 581 P.2d 878 (1978); Morton Booth Co. v. Tiara Furniture, Inc., Okl., 564 P.2d 210 (1977).

§ 9-306. "Proceeds"; Secured Party's Rights on Disposition of Collateral

(1) "Proceeds" includes whatever is received upon the sale, exchange, collection or other disposition of collateral or proceeds. Insurance payable by reason of loss or damage to the collateral is proceeds, except to the extent that it is payable to a person other than a party to the security agreement. Money, checks, deposit accounts and the like are "cash proceeds". All other proceeds are "noncash proceeds".

(2) Except where this article otherwise provides, a security interest continues in collateral, notwithstanding sale, exchange or other disposition thereof, unless the disposition was authorized by the secured party in the security agreement or otherwise, and also continues in any identifiable proceeds including collections received by the debtor.

(3) The security interest in proceeds is a continuously perfected security interest if the interest in the original collateral was perfected, but it ceases to be a perfected security interest and becomes unperfected ten (10) days after receipt of the proceeds by the debtor unless:

- (a) a filed financing statement covers the original collateral and the proceeds are collateral in which a security interest may be perfected by filing in the office or offices where the financing statement has been filed and, if the proceeds are acquired with cash proceeds, the description of collateral in the financing statement indicates the types of property constituting the proceeds; or
- (b) a filed financing statement covers the original collateral and the proceeds are identifiable cash proceeds; or
- (c) the security interest in the proceeds is perfected before the expiration of the ten-day period.

Except as provided in this section, a security interest in proceeds can be perfected only by the methods or under the circumstances permitted in this article for original collateral of the same type.

(4) In the event of insolvency proceedings instituted by or against a debtor, a secured party with a perfected security interest in proceeds has a perfected security interest only in the following proceeds:

- (a) identifiable noncash proceeds and separate deposit accounts containing only proceeds;
- (b) identifiable cash proceeds in the form of money which is neither commingled with other money nor deposited in a deposit account prior to the insolvency proceedings;
- (c) identifiable cash proceeds in the form of checks and the like which are not deposited in a deposit account prior to the insolvency proceedings; and
- (d) all cash and deposit accounts of the debtor, in which proceeds have been commingled with other funds, but the perfected security interest under this paragraph (d) is:
 - (i) subject to any right of setoff; and
 - (ii) limited to an amount not greater than the amount of any cash proceeds received by the debtor within ten (10) days before the institution of the insolvency proceedings less the sum of:
 - (I) the payments to the secured party on account of cash proceeds received by the debtor during such period, and
 - (II) the cash proceeds received by the debtor during such period to which the secured party is entitled under paragraphs (a) through (c) of this subsection.

(5) If a sale of goods results in an account or chattel paper which is transferred by the seller to a secured party and if the goods are returned to or are repossessed by the seller or the secured party, the following rules determine priorities:

- (a) If the goods were collateral at the time of sale, for an indebtedness of the seller which is still unpaid, the original security interest attaches again to the goods and continues as a perfected security interest if it was perfected at the time when the goods were sold. If the security interest was originally perfected by a filing which is still effective, nothing further is required to continue the perfected status; in any other case, the secured party must take possession of the returned or repossessed goods or must file.
- (b) An unpaid transferee of the chattel paper has a security interest in the goods against the transferor. Such security interest is prior to a security interest asserted under paragraph (a) of this section to the extent that the transferee of the chattel paper was entitled to priority under Section 9-308.
- (c) An unpaid transferee of the account has a security interest in the goods against the transferor. Such security interest is subor-

dinate to a security interest asserted under paragraph (a) of this section.

- (d) A security interest of an unpaid transferee asserted under paragraph (b) or (c) of this section must be perfected for protection against creditors of the transferor and purchasers of the returned or repossessed goods.

Laws 1961, p. 170, § 9-306; Laws 1981, c. 194, § 20.

Chattel Mortgages ⇨ 165 et seq.

Pledges ⇨ 27, 29.

Sales ⇨ 479.

Construction and application.

When mortgaged goods are returned to or repossessed by dealer, original perfection of lien does not automatically carry over to returned goods, but holder of chattel paper must either take possession of returned or repossessed goods or reperfect new security interest as to seller and file as to it to protect its security interest. *Osborn v. First Nat. Bank of Holdenville, Okl.App., 472 P.2d 440.*

Security interest of plaintiff bank, to which used car dealer assigned note and security agreement executed by purchaser of used car, and which neither took possession of car when it was repossessed by dealer nor reperfected new security interest as to dealer and filed as to dealer, had no priority over second used car dealer to which first transferred vehicle, even if second dealer was creditor of first and even if second dealer's purchase of car was brought about by cancellation of debt. *Osborn v. First Nat. Bank of Holdenville, Okl.App., 472 P.2d 440.*

Consent to sale

First Nat. Bank and Trust Co. of Oklahoma City v. Iowa Beef Processors, Inc., C.A.Okla., 626 F.2d 764 (1980).

§ 9-307. Protection of Buyers of Goods

(1) A buyer in ordinary course of business (subsection (9) of Section 1-201) other than a person buying farm products from a person engaged in farming operations takes free of a security interest created by his seller even though the security interest is perfected and even though the buyer knows of its existence.

(2) A buyer other than a buyer in ordinary course of business (subsection (1) of this section) takes free of a security interest to the extent that it secures future advances made after the secured party acquires knowledge of the purchase or more than forty-five (45) days after the purchase, whichever first occurs, unless made pursuant to a commitment entered into without knowledge of the purchase and before the expiration of the forty-five-day period. Laws 1961, p. 171, § 9-307; Laws 1981, c. 194, § 21.

Chattel Mortgages ⇨ 224.

Pledges ⇨ 43.

Sales ⇨ 234(4), 473.

§ 9-308. Purchase of Chattel Paper and Instruments

A purchaser of chattel paper or an instrument who gives new value and takes possession of it in the ordinary course of his business has priority over a security interest in the chattel paper or instrument:

- (a) which is perfected under Section 9-304 (permissive filing and temporary perfection) or under Section 9-306 (perfection as to proceeds) if he acts without knowledge that the specific paper or instrument is subject to a security interest; or

- (b) which is claimed merely as proceeds of inventory subject to a security interest (Section 9-306), even though he knows that the specific paper or instrument is subject to the security interest.

Laws 1961, p. 171, § 9-308; Laws 1981, c. 194, § 22.
Pledges ⇨ 43.
Sales ⇨ 234(4), 473.

§ 9-309. Protection of Purchasers of Instrument and Documents

Nothing in this article limits the rights of a holder in due course of a negotiable instrument (Section 3-302) or a holder to whom a negotiable document of title has been duly negotiated (Section 7-501) or a bona fide purchaser of a security (Section 8-301) and such holders or purchasers take priority over an earlier security interest even though perfected. Filing under this article does not constitute notice of the security interest to such holders or purchasers.

Laws 1961, p. 171, § 9-309.
Bills and Notes ⇨ 363.
Pledges ⇨ 43.
Sales ⇨ 473.

§ 9-310. Priority of Certain Liens Arising by Operation of Law

When a person in the ordinary course of his business furnishes services or materials with respect to goods subject to a security interest, a lien upon goods in the possession of such person given by statute or rule of law for such materials or services takes priority over a perfected security interest unless the lien is statutory and the statute expressly provides otherwise.

Laws 1961, p. 171, § 9-310.
Chattel Mortgages ⇨ 138(1).
Pledges ⇨ 23.
Sales ⇨ 474.

Agister liens

Agristor Credit Corp. v. Unruh, Okl., 571 P.2d 1220 (1977).

Auto repairs

Commerce Acceptance of Oklahoma City, Inc. v. Press, Okl., 428 P.2d 213.

Servicemen or materialmen

Security Nat. Bank and Trust Co. of Norman v. Reiginger, Okl., 610 P.2d 1222 (1980); *Earthmovers, Inc. v. Clarence L. Boyd Co., Inc., Okl.App.*, 554 P.2d 877 (1976).

§ 9-311. Alienability of Debtor's Rights; Judicial Process

The debtor's rights in collateral may be voluntarily or involuntarily transferred (by way of sale, creation of a security interest, attachment, levy, garnishment or other judicial process) notwithstanding a provision in the security agreement prohibiting any transfer or making the transfer constitute a default, but the interest so transferred is subject to the creditor's security interest if it is properly perfected, and nothing stated herein shall be construed to be inconsistent with 21 O.S., Section 1834.

Laws 1961, p. 172, § 9-311.
Chattel Mortgages ⇨ 218.
Pledges ⇨ 43.
Sales ⇨ 472, 483.

§ 9-312. Priorities Among Conflicting Security Interests in the Same Collateral

(1) The rules of priority stated in other sections of this part and in the following sections shall govern when applicable: Section 4-208 with respect to the security interests of collecting banks in items being collected, accompanying documents and proceeds; Section 7 of this act¹ on security interests related to other jurisdictions; and Section 11 of this act² on consignments.

(2) A perfected security interest in crops for new value given to enable the debtor to produce the crops during the production season and given not more than three (3) months before the crops become growing crops by planting or otherwise takes priority over an earlier perfected security interest to the extent that such earlier interest secures obligations due more than six (6) months before the crops become growing crops by planting or otherwise, even though the person giving new value had knowledge of the earlier security interest.

(3) A perfected purchase money security interest in inventory has priority over a conflicting security interest in the same inventory and also has priority in identifiable cash proceeds received on or before the delivery of the inventory to a buyer if:

- (a) the purchase money security interest is perfected at the time the debtor receives possession of the inventory; and
- (b) the purchase money secured party gives notification in writing to the holder of the conflicting security interest, if the holder had filed a financing statement covering the same types of inventory (i) before the date of the filing made by the purchase money secured party, or (ii) before the beginning of the twenty-one-day period where the purchase money security interest is temporarily perfected without filing or possession (subsection (5) of Section 9-304); and
- (c) the holder of the conflicting security interest receives the notification within five (5) years before the debtor receives possession of the inventory; and
- (d) the notification states that the person giving the notice has or expects to acquire a purchase money security interest in inventory of the debtor, describing such inventory by item or type.

(4) A purchase money security interest in collateral other than inventory has priority over a conflicting security interest in the same collateral or its proceeds if the purchase money security interest is perfected at the time the debtor receives possession of the collateral or within ten (10) days thereafter.

(5) In all cases not governed by other rules stated in this section, including cases of purchase money security interests which do not qualify for the special priorities set forth in subsections (3) and (4) of

this section, priority between conflicting security interests in the same collateral shall be determined according to the following rules:

- (a) conflicting security interests rank according to priority in time of filing or perfection. Priority dates from the time a filing is first made covering the collateral or the time the security interest is first perfected, whichever is earlier, provided that there is no period thereafter when there is neither filing nor perfection; and
- (b) so long as conflicting security interests are unperfected, the first to attach has priority.

(6) For the purposes of subsection (5) of this section, a date of filing or perfection as to collateral is also a date of filing or perfection as to proceeds.

(7) If future advances are made while a security interest is perfected by filing or the taking of possession, the security interest has the same priority for the purposes of subsection (5) of this section with respect to the future advances as it does with respect to the first advance. If a commitment is made before or while the security interest is so perfected, the security interest has the same priority with respect to advances made pursuant thereto. In other cases a perfected security interest has priority from the date the advance is made.

Laws 1961, p. 172, § 9-312; Laws 1981, c. 194, § 23.

¹ Section 9-103.1 of this title.

² Section 9-114 of this title.

Chattel Mortgages ⇒ 137 et seq.

Pledges ⇒ 23.

Sales ⇒ 474.

Construction and application

Where financing statement and purchase money security interest upon collateral properly classified as "equipment" is filed in Oklahoma County within ten days after debtor receives possession of the collateral, it becomes a perfected purchase money security interest, and has priority over a conflicting security interest in same collateral. *National Bank of Commerce v. First Nat. Bank & Trust Co. of Tulsa, Okl.*, 446 P.2d 277.

§ 9-313. Priority of Security Interests in Fixtures

(1) In this section and in the provisions of Part 4 of this article referring to fixture filing, unless the context otherwise requires:

- (a) Goods are "fixtures" when they become so related to particular real estate that an interest in them arises under real estate law.
- (b) A "fixture filing" is the filing in the office where a mortgage on the real estate would be filed or recorded of a financing statement covering goods which are or are to become fixtures and conforming to the requirements of subsection (5) of Section 9-402.
- (c) A mortgage is a "construction mortgage" to the extent that it secures an obligation incurred for the construction of an improvement on land including the acquisition cost of the land, if the recorded writing so indicates.

(2) A security interest under this article may be created in goods which are fixtures or may continue in goods which become fixtures, but no security interest exists under this article in ordinary building materials incorporated into an improvement on land.

(3) This article does not prevent creation of an encumbrance upon fixtures pursuant to real estate law.

(4) A perfected security interest in fixtures has priority over the conflicting interest of an encumbrancer or owner of the real estate when:

- (a) the security interest is a purchase money security interest; the interest of the encumbrancer or owner arises before the goods become fixtures; the security interest is perfected by a fixture filing before the goods become fixtures or within ten (10) days thereafter, and the debtor has an interest of record in the real estate or is in possession of the real estate; or

- (b) the security interest is perfected by a fixture filing before the interest of the encumbrancer or owner is of record; the security interest has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner, and the debtor has an interest of record in the real estate or is in possession of the real estate; or

- (c) the fixtures are readily removable factory or office machines or readily removable replacements of domestic appliances which are consumer goods, and before the goods become fixtures, the security interest is perfected by any method permitted by this article; or

- (d) the conflicting interest is a lien on the real estate obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this article.

(5) A security interest in fixtures, whether or not perfected, has priority over the conflicting interest of an encumbrancer or owner of the real estate when:

- (a) the encumbrancer or owner has consented in writing to the security interest or has disclaimed an interest in the goods as fixtures; or

- (b) the debtor has a right to remove the goods as against the encumbrancer or owner. If the debtor's right terminates, the priority of the security interest continues for a reasonable time.

(6) Notwithstanding paragraph (a) of subsection (4) of this section but otherwise subject to subsections (4) and (5) of this section, a security interest in fixtures is subordinate to a construction mortgage recorded before the goods become fixtures, if the goods become fixtures before the completion of the

construction. To the extent that is given to refinancing a construction mortgage, a mortgage has this priority to the same extent as the construction mortgage.

(7) In cases not within the preceding subsections, a security interest in fixtures is subordinate to the conflicting interest of an encumbrancer or owner of the related real estate who is not the debtor.

(8) When the secured party has priority over all owners and encumbrancers of the real estate, he may, on default, subject to the provisions of Part 5, remove his collateral from the real estate, but he must reimburse any encumbrancer or owner of the real estate who is not the debtor and who has not otherwise agreed for the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation.

Laws 1961, p. 173, § 9-313; Laws 1981, c. 194, § 24.

Chattel Mortgages ⇨ 137 et seq.

Fixtures ⇨ 14 et seq., 22.

Pledges ⇨ 23.

Sales ⇨ 465, 472 et seq.

§ 9-314. Accessions

(1) A security interest in goods which attaches before they are installed in or affixed to other goods takes priority as to the goods installed or affixed (called in this section "accessions") over the claims of all persons to the whole except as stated in subsection (3) and subject to Section 9-315(1).

(2) A security interest which attaches to goods after they become part of a whole is valid against all persons subsequently acquiring interests in the whole except as stated in subsection (3) but is invalid against any person with an interest in the whole at the time the security interest attaches to the goods who has not in writing consented to the security interest or disclaimed an interest in the goods as part of the whole.

(3) The security interests described in subsections (1) and (2) do not take priority over

- (a) a subsequent purchaser for value of any interest in the whole; or
- (b) a creditor with a lien on the whole subsequently obtained by judicial proceedings; or
- (c) a creditor with a prior perfected security interest in the whole to the extent that he makes subsequent advances

if the subsequent purchase is made, the lien by judicial proceedings obtained or the subsequent advance under the prior perfected security interest is made or contracted for without knowledge of the security interest and before it is perfected. A purchaser of the whole at a foreclosure sale other than the holder of a perfected security interest purchas-

ing at his own foreclosure sale is a subsequent purchaser within this section.

(4) When under subsections (1) or (2) and (3) a secured party has an interest in accessions which has priority over the claims of all persons who have interests in the whole, he may on default subject to the provisions of Part 5 remove his collateral from the whole but he must reimburse any encumbrancer or owner of the whole who is not the debtor and who has not otherwise agreed for the cost of repair of any physical injury but not for any diminution in value of the whole caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation.

Laws 1961, p. 173, § 9-314.

Accession ⇨ 2

§ 9-315. Priority When Goods Are Commingled or Processed

(1) If a security interest in goods was perfected and subsequently the goods or a part thereof have become part of a product or mass, the security interest continues in the product or mass if

- (a) the goods are so manufactured, processed, assembled or commingled that their identity is lost in the product or mass; or
- (b) a financing statement covering the original goods also covers the product into which the goods have been manufactured, processed or assembled.

In a case to which paragraph (b) applies, no separate security interest in that part of the original goods which has been manufactured, processed or assembled into the product may be claimed under Section 9-314.

(2) When under subsection (1) more than one security interest attaches to the product or mass, they rank equally according to the ratio that the cost of the goods to which each interest originally attached bears to the cost of the total product or mass.

Laws 1961, p. 174, § 9-315.

Chattel Mortgages ⇨ 137 et seq.

Confusion of Goods ⇨ 8, 9, 11.

Pledges ⇨ 23.

Sales ⇨ 472 et seq.

§ 9-316. Priority Subject to Subordination

Nothing in this article prevents subordination by agreement by any person entitled to priority.

Laws 1961, p. 174, § 9-316.

Chattel Mortgages ⇨ 137 et seq.

Pledges ⇨ 23.

Sales ⇨ 472 et seq.

Construction and application

Legal priority of security interests perfected by chronological order of filing may be subordinated by agreement between creditors who need not cast agreement in any particular form and may make verbal agreement. *Williams v. First Nat. Bank & Trust Co. of Vinita, Okl.*, 482 P.2d 595.

§ 9-317. Secured Party Not Obligated on Contract of Debtor

The mere existence of a security interest or authority given to the debtor to dispose of or use collateral does not impose contract or tort liability upon the secured party for the debtor's acts or omissions.

Laws 1961, p. 174, § 9-317.

Chattel Mortgages ⇨ 158 et seq.

Pledges ⇨ 26 et seq.

Sales ⇨ 472.

§ 9-318. Defenses Against Assignee; Modification of Contract After Notification of Assignment; Term Prohibiting Assignment Ineffective; Identification and Proof of Assignment

(1) Unless an account debtor has made an enforceable agreement not to assert defenses or claims arising out of a sale or lease as provided in Section 9-206 the rights of an assignee are subject to:

- (a) all the terms of the contract between the account debtor and assignor and any defense or claim arising therefrom; and
- (b) any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives notification of the assignment.

(2) So far as the right to payment or a part thereof under an assigned contract has not been fully earned by performance, and notwithstanding notification of the assignment, any modification of or substitution for the contract made in good faith and in accordance with reasonable commercial standards is effective against an assignee unless the account debtor has otherwise agreed but the assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that such modification or substitution is a breach by the assignor.

(3) The account debtor is authorized to pay the assignor until the account debtor receives notification that the amount due or to become due has been assigned and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assigned is ineffective. If requested by the account debtor, the assignee must seasonably furnish reasonable proof that the assignment has been made, and unless he does so, the account debtor may pay the assignor.

(4) A term in any contract between an account debtor and an assignor is ineffective if it prohibits assignment of an account or chattel paper or prohibits creation of a security interest in a general intangible for money due or to become due or requires the account debtor's consent to such assignment or security interest.

Laws 1961, p. 174, § 9-318; Laws 1981, c. 194, § 25.

Assignments ⇨ 100 et seq.

Chattel Mortgages ⇨ 211.

Pledges ⇨ 44.

Sales ⇨ 475.

Construction and application

P.E.A.C.E. Corp. v. Oklahoma Natural Gas Co., Okl., 568 P.2d 1273 (1977).

PART 4. FILING

§ 9-401. Place of Filing; Erroneous Filing; Removal of Collateral

(1) The proper place to file in order to perfect a security interest is as follows:

- (a) when the collateral is equipment used in farming operations, or farm products or accounts or general intangibles arising from or relating to the sale of farm products by a farmer, or consumer goods, then in the office of the county clerk in the county of the debtor's residence, or if the debtor is not a resident of this state, then in the office of the county clerk in the county where the goods are kept, and in addition, when the collateral is crops growing or to be grown, in the office of the county clerk in the county where the land is located;
- (b) when the collateral is timber to be cut or is minerals or the like, including oil and gas, or accounts subject to subsection (5) of Section 7 of this act¹, or when the financing statement is filed as a fixture filing (Section 9-313) and the collateral is goods which are or are to become fixtures, then in the office where a mortgage on the real estate would be filed or recorded;
- (c) in all other cases, in the office of the county clerk of Oklahoma County;
- (d) when the collateral is livestock, in the county of the debtor's residence and in the office of the county clerk of Oklahoma County.

(2) A filing which is made in good faith in an improper place or not in all of the places required by this section is nevertheless effective with regard to any collateral as to which the filing complied with the requirements of this article and is also effective with regard to collateral covered by the financing statement against any person who has knowledge of the contents of such financing statement.

(3) A filing which is made in the proper county continues effective for four (4) months after a change to another county of the debtor's residence or place of business or the location of the collateral, whichever controlled the original filing. It becomes ineffective thereafter unless a copy of the financing statement signed by the secured party is filed in the new county within said period. The security interest may also be perfected in the new county after the expiration of the four-month period; in such case perfection dates from the time of perfection in the new county. A change in the use of the collateral does not impair the effectiveness of the original filing.

(4) The rules stated in Section 7 of this act determine whether filing is necessary in this state.

(5) Notwithstanding the preceding subsections of this section, and subject to subsection (3) of Section 9-302, the proper place to file in order to perfect a security interest in collateral, including fixtures, of a transmitting utility is the office of the county clerk of Oklahoma County. This filing constitutes a fixture filing (Section 9-313) as to the collateral described therein which is or is to become fixtures.

(6) For the purposes of this section, the residence of an organization is its place of business if it has one, or its chief executive office if it has more than one place of business.

Laws 1961, p. 175, § 9-401; Laws 1975, c. 313, § 3, eff. Dec. 31, 1975; Laws 1981, c. 82, § 1, eff. Dec. 31, 1981; Laws 1981, c. 194, § 26.

1 Section 9-103.1 of this title.

Chattel Mortgages ⇨ 87.

Pledges ⇨ 17.

Sales ⇨ 472 et seq.

Construction and application

In re McClain, C.A.Okl., 447 F.2d 241 (1971), certiorari denied 92 S.Ct. 943, 405 U.S. 918, 30 L.Ed.2d 788; First State Bank in Talihina v. United Dollar Stores, Okl., 571 P.2d 444 (1977); Security Nat. Bank and Trust Co. of Norman v. Dentsply Professional Plan, Okl., 617 P.2d 1340 (1980).

Law governing

In re McClain, C.A.Okl., 447 F.2d 241 (1971), certiorari denied 92 S.Ct. 943, 405 U.S. 918, 30 L.Ed.2d 788.

§ 9-401A. Statements Pertaining to Real Estate; Legal Description; Recording and Indexing; Fees

(1) No filing of a financing statement, continuation statement, termination statement, or assignment or release of a financing statement under the provisions of subsection (1)(b) of Section 9-401 of this article shall constitute record notice of the contents thereof against any subsequent purchaser or encumbrancer of real estate or any interest therein unless the same contains a legal description of the real estate adequate for the purposes of indexing in the tract indexes of the county wherein the real estate is situated.

(2) It shall be the duty of the county clerk to cause all such financing statements, continuation statements, termination statements, or assignments or releases of financing statements containing an adequate legal description to be recorded and indexed in the records of said office in the same place and manner as a mortgage on real estate or assignment or release thereof.

(3) The fees for filing, recording and indexing a financing statement, continuation statement, termination statement, assignment or release filed under the provisions of subsection (1)(b) of Section 9-401 of this article, or procuring certified copies thereof, shall be the same as the fees chargeable by the county clerk in respect to recording real estate mortgages, assignments or releases, or certifying copies thereof.

(4) The provisions of subsection (2) of Section 9-407 of this article in respect to fees for certified

copies shall not be applicable to filings under subsection (1)(b) of Section 9-401 of this article.

Laws 1970, c. 246, §§ 6 to 9.

§ 9-402. Formal Requisites of Financing Statement; Amendments; Mortgage as Financing Statement

(1) A financing statement is sufficient if it gives the names of the debtor and the secured party, is signed by the debtor, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address of the debtor and contains a statement indicating the types, or describing the items, of collateral. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches. When the financing statement covers crops growing or to be grown, the statement must also contain a description of the real estate concerned. When the financing statement covers timber to be cut or covers minerals or the like, including oil and gas, or accounts subject to subsection (5) of Section 7 of this act¹, or when the financing statement is filed as a fixture filing (Section 9-313) and the collateral is goods which are or are to become fixtures, the statement must also comply with subsection (5) of this section. A copy of the security agreement is sufficient as a financing statement if it contains the above information and is signed by the debtor. A carbon, photographic or other reproduction of a security agreement or a financing statement is sufficient as a financing statement if the security agreement so provides or if the original has been filed in this state.

(2) A financing statement which otherwise complies with subsection (1) is sufficient when it is signed by the secured party instead of the debtor if it is filed to perfect a security interest in:

- (a) collateral already subject to a security interest in another jurisdiction when it is brought into this state, or when the debtor's location is changed to this state. Such a financing statement must state that the collateral was brought into this state or that the debtor's location was changed to this state under such circumstances; or
- (b) proceeds under Section 9-306 if the security interest in the original collateral was perfected. Such a financing statement must describe the original collateral; or
- (c) collateral as to which the filing has lapsed; or
- (d) collateral acquired after a change of name, identity or corporate structure of the debtor (subsection (7) of this section).

(3) A form substantially as follows is sufficient to comply with subsection (1):

Name of debtor (or assignor)
Address

Name of secured party (or assignee)

Address

1. This financing statement covers the following types (or items) of property:

(Describe)

2. (If collateral is crops) The above described crops are growing or are to be grown on:

(Describe Real Estate)

3. (If applicable) The above goods are to become fixtures on:

(Describe Real Estate)

and this financing statement is to be filed against the tract index in the real estate records.

(If the debtor does not have an interest of record) The name of a record owner is

4. (If products of collateral are claimed) Products of the collateral are also covered.

Signature of Debtor (or Assignor)

Signature of Secured Party (or Assignee)

(Use whichever is applicable)

(4) A financing statement may be amended by filing a writing signed by both the debtor and the secured party. An amendment does not extend the period of effectiveness of a financing statement. If any amendment adds collateral, it is effective as to the added collateral only from the filing date of the amendment. In this article, unless the context otherwise requires, the term "financing statement" means the original financing statement and any amendments.

(5) When a writing constituting a mortgage upon lands, or interests in lands such as oil and gas leasehold estates, also covers minerals to be severed from such lands, equipment used in mining, storing, treating and marketing such minerals and the accounts and proceeds to be derived from disposition of such minerals contains a legal description of such lands sufficient to comply with Sections 287, 291 and 298 of Title 19 of the Oklahoma Statutes, as amended, has been validly executed, acknowledged and recorded in the office of the county clerk for the county in which such lands are located, such mortgage shall constitute a financing statement covering such collateral and no other filing or recording shall be required to perfect the security interests in such collateral covered by the mortgage. The mortgage shall remain effective to perfect such security interests until it shall be released or satisfied of record or its effectiveness as to the lands or interests in lands described therein shall be otherwise effectively terminated.

(6) A mortgage is effective as a financing statement filed as a fixture filing from the date of its recording if:

(a) the goods are described in the mortgage by item or type;

(b) the goods are or are to become fixtures related to the real estate described in the mortgage;

(c) the mortgage complies with the requirements for a financing statement in this section other than a recital that it is to be filed in the real estate records; and

(d) the mortgage is duly recorded. No fee with reference to the financing statement is required other than the regular recording and satisfaction fees with respect to the mortgage.

(7) A financing statement sufficiently shows the name of the debtor if it gives the individual, partnership or corporate name of the debtor, whether or not it adds other trade names or the names of partners. Where the debtor so changes his name, or in the case of an organization, its name, identity or corporate structure that a filed financing statement becomes seriously misleading, the filing is not effective to perfect a security interest in collateral acquired by the debtor more than four (4) months after the change, unless a new appropriate financing statement is filed before the expiration of that time. A filed financing statement remains effective with respect to collateral transferred by the debtor even though the secured party knows of or consents to the transfer.

(8) A financing statement substantially complying with the requirements of this section is effective even though it contains minor errors which are not seriously misleading.

Laws 1961, p. 175, § 9-402; Laws 1981, c. 194, § 27.

1 Section 9-103.1 of this title.

Chattel Mortgages 41 et seq.

Pledges 13.

Sales 461.

Construction and application

Matter of Fowler, D.C.Okl., 407 F.Supp. 799 (1975).

Sufficiency of description

Central Nat. Bank & Trust Co. of Enid v. Community Bank & Trust Co. of Enid, Okl., 528 P.2d 710 (1974).

Sufficiency of statement

First Nat. Bank of Atoka v. Calvin Pickle Co., Okl., 516 P.2d 265 (1973), 67 A.L.R.3d 302.

§ 9-403. Acts Constitute Filing; Term of Filing; Effect; Continuation Statement; Duty of Filing Officer; Fees

(1) Presentation for filing of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer constitutes filing under this article.

(2) Except as provided in subsection (6) of this section a filed financing statement is effective for a period of five (5) years from the date of filing. The

effectiveness of a filed financing statement lapses on the expiration of the five-year period unless a continuation statement is filed prior to the lapse. If a security interest perfected by filing exists at the time insolvency proceedings are commenced by or against the debtor, the security interest remains perfected until termination of the insolvency proceedings and thereafter for a period of sixty (60) days or until expiration of the five-year period, whichever occurs later. Upon lapse the security interest becomes unperfected, unless it is perfected without filing. If the security interest becomes unperfected upon lapse, it is deemed to have been unperfected as against a person who became a purchaser or lien creditor before lapse.

(3) A continuation statement may be filed by the secured party within six (6) months prior to the expiration of the five-year period specified in subsection (2) of this section. Any such continuation statement must be signed by the secured party, identify the original statement by file number and state that the original statement is still effective. A continuation statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with subsection (2) of Section 9-405, including payment of the required fee. Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for five (5) years after the last date to which the filing was effective whereupon it lapses in the same manner as provided in subsection (2) of this section unless another continuation statement is filed prior to such lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement. Unless a statute on disposition of public records provides otherwise, the filing officer may remove a lapsed statement from the files and destroy it immediately if he has retained a microfilm or other photographic record, or in other cases after one (1) year after the lapse. The filing officer shall so arrange matters by physical annexation of financing statements to continuation statements or other related filings, or by other means, that if he physically destroys the financing statements of a period more than five (5) years past, those which have been continued by a continuation statement or which are still effective under subsection (6) of this section shall be retained.

(4) Except as provided in subsection (7) of this section a filing officer shall mark each statement with a file number and with the date and hour of filing and shall hold the statement or a microfilm or other photographic copy thereof for public inspection. In addition the filing officer shall index the statements according to the name of the debtor and shall note in the index the file number and the address of the debtor given in the statement.

(5) The uniform fee for filing and indexing and for stamping a copy furnished by the secured party to show the date and place of filing for an original

financing statement or for a continuation statement shall be Five Dollars (\$5.00).

(6) If the debtor is a transmitting utility (subsection (5) of Section 9-401) and a filed financing statement so states, it is effective until a termination statement is filed. A real estate mortgage which is effective as a fixture filing under subsection (6) of Section 9-402 remains effective as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real estate.

(7) When a writing constituting a mortgage upon lands, or interests in lands such as oil and gas leasehold estates, also covers minerals to be severed from such lands, equipment used in mining, storing, treating and marketing such minerals and the accounts and proceeds to be derived from disposition of such minerals contains a legal description of such lands sufficient to comply with Sections 287, 291 and 298 of Title 19 of the Oklahoma Statutes of 1971, as amended, has been validly executed, acknowledged and recorded in the office of the county clerk for the county in which such lands are located, such mortgage shall constitute a financing statement covering such collateral and no other filing or recording shall be required to perfect the security interest in such collateral covered by the mortgage. The mortgage shall remain effective to perfect such security interests until it shall be released or satisfied of record or its effectiveness as to the lands or interests in lands described therein shall be otherwise effectively terminated.

Laws 1961, p. 176, § 9-403; Laws 1965, c. 416, § 1; Laws 1965, c. 514, § 1; Laws 1971, c. 184, § 1, emerg. eff. June 1, 1971; Laws 1978, c. 63, § 2, eff. Oct. 1, 1978; Laws 1979, c. 273, § 2, emerg. eff. June 5, 1979; Laws 1981, c. 194, § 28.

Chattel Mortgages ⇨ 87 et seq.

Pledges ⇨ 17.

Sales ⇨ 465.

Lapsed filing

Security Nat. Bank and Trust Co. of Norman v. Dentaply Professional Plan, Okl., 617 P.2d 1340 (1980).

§ 9-404. Termination Statement

(1) If a financing statement covering consumer goods is filed on or after October 1, 1981, then within thirty (30) days or within ten (10) days following written demand by the debtor after there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the secured party must file with each filing officer with whom the financing statement was filed, a termination statement to the effect that he no longer claims a security interest under the financing statement, which shall be identified by file number. In other cases whenever there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the secured party must on written demand by the debtor send the debtor, for each filing officer with whom the financing statement was filed, a termination statement to the effect that he no longer claims a security interest under the

financing statement, which shall be identified by file number. A termination statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record complying with subsection (2) of Section 9-405, including payment of the required fee. If the affected secured party fails to file or send such a termination statement as required by this subsection, he shall be liable to the debtor for One Hundred Dollars (\$100.00) and in addition for any loss caused to the debtor by such failure.

(2) On presentation to the filing officer of such a termination statement he must note it in the index. If he has received the termination statement in duplicate, he shall return one copy of the termination statement to the secured party stamped to show the time of receipt thereof. If the filing officer has a microfilm or other photographic record of the financing statement and of any related continuation statement, statement of assignment and statement of release, he may remove the originals from the files at any time after receipt of the termination statement, or if he has no such record, he may remove them from the files at any time after one (1) year after receipt of the termination statement.

(3) If the termination statement is in the standard form, the uniform fee for filing and indexing the termination statement shall be Five Dollars (\$5.00). Laws 1961, p. 177, § 9-404; Laws 1965, c. 416, § 2, emerg. eff. July 7, 1965; Laws 1980, c. 337, § 1, eff. Oct. 1, 1980; Laws 1981, c. 194, § 29.

Chattel Mortgages ⇨ 243 et seq.
Pledges ⇨ 44.
Sales ⇨ 476.

§ 9-405. Assignment of Security Interest; Fees; Duty of Filing Officer

(1) A financing statement may disclose an assignment of a security interest in the collateral described in the financing statement by indication in the financing statement of the name and address of the assignee or by an assignment itself or a copy thereof on the face or back of the statement. On presentation to the filing officer of such a financing statement, the filing officer shall mark the same as provided in Section 9-403(4). The uniform fee for filing, indexing and furnishing filing data for a financing statement so indicating an assignment shall be Five Dollars (\$5.00).

(2) A secured party may assign of record all or part of his rights under a financing statement by the filing in the place where the original financing statement was filed of a separate written statement of assignment signed by the secured party of record and setting forth the name of the secured party of record and the debtor, the file number and the date of filing of the financing statement and the name and address of the assignee and containing a description of the collateral assigned. A copy of the assignment is sufficient as a separate statement if it

complies with the preceding sentence. On presentation to the filing officer of such a separate statement, the filing officer shall mark such separate statement with the date and hour of the filing. He shall note the assignment on the index of the financing statement; or in the case of a fixture filing, or a filing covering timber to be cut, or covering minerals or the like, including oil and gas, or accounts subject to subsection (5) of Section 7 of this act, he shall index the assignment under the name of the assignor or as grantor and, to the extent that the law of this state provides for indexing the assignment of a mortgage under the name of the assignee, he shall index the assignment of the financing statement under the name of the assignee. The uniform fee for filing, indexing and furnishing filing data about such a separate statement of assignment shall be Five Dollars (\$5.00).

Notwithstanding the provisions of this subsection, an assignment of record of a security interest in a fixture contained in a mortgage effective as a fixture filing (subsection (6) of Section 9-402) may be made only by an assignment of the mortgage in the manner provided by the law of this state other than this act.

(3) After the disclosure or filing of an assignment under this section, the assignee is the secured party of record.

Laws 1961, p. 177, § 9-405; Laws 1965, c. 416, § 3, emerg. eff. July 7, 1965; Laws 1978, c. 63, § 3, eff. Oct. 1, 1978; Laws 1979, c. 273, § 3, emerg. eff. June 5, 1979; Laws 1981, c. 194, § 30.

Chattel Mortgages ⇨ 204.
Pledges ⇨ 40 et seq.
Sales ⇨ 475.

§ 9-406. Release of Collateral; Duties of Filing Officer; Fees

A secured party of record may by his signed statement release all or part of any collateral described in a filed financing statement. The statement of release is sufficient if it contains a description of the collateral being released, the name and address of the debtor, the name and address of the secured party, and the file number of the financing statement. A statement of release signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with subsection (2) of Section 9-405, including payment of the required fee. Upon presentation of such a statement of release to the filing officer, he shall mark the statement with the hour and date of filing and shall note the same upon the margin of the index of the filing of the financing statement. The uniform fee for filing and noting such a statement of release shall be Five Dollars (\$5.00).

Laws 1961, p. 178, § 9-406; Laws 1981, c. 194, § 31.

Chattel Mortgages ⇨ 243 et seq.
Pledges ⇨ 44.
Sales ⇨ 472.

§ 9-407. Information From Filing Officer

(1) If the person filing any financing statement, termination statement, statement of assignment or statement of release furnishes the filing officer a copy thereof, the filing officer shall, upon request, note upon the copy the file number and date and hour of the filing of the original and deliver or send the copy to such person.

(2) Upon request of any person, the filing officer shall issue his certificate showing whether there is on file, on the date and hour stated therein, any presently effective financing statement naming a particular debtor and any statement of assignment thereof and, if there is, giving the date and hour of filing of each such statement and the names and addresses of each secured party therein. The uniform fee for such a certificate shall be Five Dollars (\$5.00). Upon request the filing officer shall furnish a certified copy of any filed financing statement or statement of assignment for a uniform fee of One Dollar (\$1.00) per page.

Laws 1961, p. 178, § 9-407; Laws 1981, c. 194, § 32.
Registers of Deeds ⇨ 5.

§ 9-408. Financing Statements Covering Consigned or Leased Goods

A consignor or lessor of goods may file a financing statement using the terms "consignor", "consignee", "lessor", "lessee" or the like instead of the terms specified in Section 9-402. The provisions of this part shall apply as appropriate to such a financing statement but its filing shall not of itself be a factor in determining whether or not the consignment or lease is intended as security (Section 1-201(37)). However, if it is determined for other reasons that the consignment or lease is so intended, a security interest of the consignor or lessor which attaches to the consigned or leased goods is perfected by such filing.

Laws 1981, c. 194, § 33.

PART 5. DEFAULT**§ 9-501. Default; Procedure When Security Agreement Covers Both Real and Personal Property**

(1) When a debtor is in default under a security agreement, a secured party has the rights and remedies provided in this part, and except as limited by subsection (3) of this section, those provided in the security agreement. He may reduce his claim to judgment, foreclose or otherwise enforce the security interest by any available judicial procedure. If the collateral is documents, the secured party may proceed either as to the documents or as to the goods covered thereby. A secured party in possession has the rights, remedies and duties provided in Section 9-207. The rights and remedies referred to in this subsection are cumulative.

(2) After default, the debtor has the rights and remedies provided in this part, those provided in the

security agreement and those provided in Section 9-207.

(3) To the extent that they give rights to the debtor and impose duties on the secured party, the rules stated in the subsections referred to below may not be waived or varied except as provided with respect to compulsory disposition of collateral (subsection (3) of Section 9-504, and Section 9-505) and with respect to redemption of collateral (Section 9-506) but the parties may by agreement determine the standards by which the fulfillment of these rights and duties is to be measured if such standards are not manifestly unreasonable:

- (a) subsection (2) of Section 9-502 and subsection (2) of Section 9-504, insofar as they require accounting for surplus proceeds of collateral;
- (b) subsection (3) of Section 9-504 and subsection (1) of Section 9-505, which deal with disposition of collateral;
- (c) subsection (2) of Section 9-505, which deals with acceptance of collateral as discharge of obligation;
- (d) Section 9-506, which deals with redemption of collateral; and
- (e) subsection (1) of Section 9-507, which deals with the secured party's liability for failure to comply with this part.

(4) If the security agreement covers both real and personal property, the secured party may proceed under this part as to the personal property or he may proceed as to both the real and the personal property in accordance with his rights and remedies in respect of the real property, in which case the provisions of this part do not apply.

(5) When a secured party has reduced his claim to judgment, the lien of any levy which may be made upon his collateral by virtue of any execution based upon the judgment shall relate back to the date of the perfection of the security interest in such collateral. A judicial sale, pursuant to such execution, is a foreclosure of the security interest by judicial procedure within the meaning of this section, and the secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this article.

Laws 1961, p. 178, § 9-501; Laws 1981, c. 194, § 34.

Chattel Mortgages ⇨ 249 et seq.

Pledges ⇨ 58 et seq.

Sales ⇨ 479.

Right of deficiency

Brunswick Corp. v. J & P, Inc., D.C.Okl., 296 F.Supp. 544, affirmed 424 F.2d 100.

§ 9-502. Collection Rights of Secured Party

(1) When so agreed, and in any event on default, the secured party is entitled to notify an account debtor or the obligor on an instrument to make payment to him whether or not the assignor was theretofore making collections on the collateral, and

Section

also to take control of any proceeds to which he is entitled under Section 9-306.

(2) A secured party who by agreement is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor and who undertakes to collect from the account debtors or obligors must proceed in a commercially reasonable manner and may deduct his reasonable expenses of realization from the collections. If the security agreement secures an indebtedness, the secured party must account to the debtor for any surplus and, unless otherwise agreed, the debtor is liable for any deficiency. But, if the underlying transaction was a sale of accounts or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides.

Laws 1961, p. 179, § 9-502; Laws 1981, c. 194, § 35.

Chattel Mortgages ⇨ 235 et seq.

Pledges ⇨ 53 et seq.

Sales ⇨ 479, 480.

§ 9-503. Secured Party's Right to Take Possession After Default

Unless otherwise agreed a secured party has on default the right to take possession of the collateral. In taking possession a secured party may proceed without judicial process if this can be done without breach of the peace or may proceed by action. If the security agreement so provides the secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties. Without removal a secured party may render equipment unusable, and may dispose of collateral on the debtor's premises under Section 9-504.

Laws 1961, p. 179, § 9-503.

Chattel Mortgages ⇨ 162.

Pledges ⇨ 53 et seq.

Sales ⇨ 479.

Validity

Self-help repossession is constitutional. *Eustice v. Brazille*, Okl., 567 P.2d 92 (1977).

Construction and application

Eustice v. Brazille, Okl., 567 P.2d 92 (1977). *Farmers State Bank v. Afton v. Ballew*, Okl.App., 626 P.2d 337 (1981).

Mortgages

Kroeger v. Ogsden, Okl., 429 P.2d 781.

§ 9-504. Secured Party's Right to Dispose of Collateral After Default; Effect of Disposition

(1) A secured party, after default, may sell, lease or otherwise dispose of any or all of the collateral in its then condition or following any commercially reasonable preparation or processing. Any sale of goods is subject to the article on Sales (Article 2). The proceeds of disposition shall be applied, in the order following, to:

- (a) the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like and, to the extent provided for in the agreement and not prohibited by

law, the reasonable attorneys' fees and legal expenses incurred by the secured party;

- (b) the satisfaction of indebtedness secured by the security interest under which the disposition is made;

- (c) the satisfaction of indebtedness secured by any subordinate security interest in the collateral if written notification of demand therefor is received before distribution of the proceeds is completed. If requested by the secured party, the holder of a subordinate security interest must seasonably furnish reasonable proof of his interest, and unless he does so, the secured party need not comply with his demand.

(2) If the security interest secures an indebtedness, the secured party must account to the debtor for any surplus, and, unless otherwise agreed, the debtor is liable for any deficiency. But if the underlying transaction was a sale of accounts or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides.

(3) Disposition of the collateral may be by public or private proceedings and may be made by way of one or more contracts. Sale or other disposition may be as a unit or in parcels and at any time and place and on any terms but every aspect of the disposition including the method, manner, time, place and terms must be commercially reasonable. Unless collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, reasonable notification of the time and place of any public sale or reasonable notification of the time after which any private sale or other intended disposition is to be made shall be sent by the secured party to the debtor if he has not signed after default a statement renouncing or modifying his right to notification of sale. In the case of consumer goods, no other notification need be sent. In other cases, notification shall be sent to any other secured party and any holder of a subordinate lien from whom the secured party has received, before sending his notification to the debtor or before the debtor's renunciation of his rights, written notice of a claim of an interest in the collateral. The secured party may buy at any public sale and, if the collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations, he may buy at private sale.

(4) When collateral is disposed of by a secured party after default, the disposition transfers to a purchaser for value all of the debtor's rights therein, discharges the security interest under which it is made and any security interest or lien subordinate thereto. The purchaser takes free of all such rights and interests even though the secured party fails to comply with the requirements of this part or of any judicial proceedings:

¹ Okl.Stats. '81 Official Ed.—30

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

(b) in any other case, if the purchaser acts in good faith.

(5) A person who is liable to a secured party under a guaranty, endorsement, repurchase agreement or the like and who receives a transfer of collateral from the secured party or is subrogated to his rights has thereafter the rights and duties of the secured party. Such a transfer of collateral is not a sale or disposition of the collateral under this article.

Laws 1961, p. 179, § 9-504; Laws 1981, c. 194, § 36.

Chattel Mortgages ⇨ 162.

Pledges ⇨ 53 et seq.

Sales ⇨ 479.

Construction and application

Moore v. White, Okl., 603 P.2d 1119 (1979); *Dynallectron Corp. v. Jack Richards Aircraft Co.*, D.C., 337 F.Supp. 659 (1972), 405 U.S. 918, 30 L.Ed.2d 788; *C & L Service Co. v. Northern Equipment Co.*, Okl.App., 525 P.2d 1260 (1974); *Brunswick Corp. v. J & P, Inc.*, C.A., 424 F.2d 100.

Commercially reasonable manner

Wilkerson Motor Co., Inc. v. Johnson, Okl., 580 P.2d 505 (1978); *Liberty Nat. Bank & Trust Co. of Oklahoma City v. Acme Tool Division of Rucker Co.*, C.A.Okl., 540 F.2d 1375 (1976).

Conversion

In re Buttram, 2 B.R. 92 (1979).

Damages

Davidson v. First Bank and Trust Co., Yale, Okl., 609 P.2d 1259 (1980).

Notice

Overruling Davidson v. First State Bank and Trust Company, Yale, 559 P.2d 1228, insofar as it suggests mortgagees who fail to comply are not entitled to deficiency judgment. *Beneficial Finance Co. v. Young*, Okl., 612 P.2d 1357 (1980); *First Nat. Bank & Trust Co. of Enid v. Holston*, Okl., 559 P.2d 440 (1976).

§ 9-505. Compulsory Disposition of Collateral; Acceptance of the Collateral as Discharge of Obligation

(1) If the debtor has paid sixty percent (60%) of the cash price in the case of a purchase money security interest in consumer goods or sixty percent (60%) of the loan in the case of another security interest in consumer goods, and has not signed, after default, a statement renouncing or modifying his rights under this part a secured party who has taken possession of collateral must dispose of it under Section 9-504 and if he fails to do so within ninety (90) days after he takes possession, the debtor at his option may recover in conversion or under Section 9-507(1) on secured party's liability.

(2) In any other case involving consumer goods or any other collateral a secured party in possession may, after default, propose to retain the collateral in satisfaction of the obligation. Written notice of such proposal shall be sent to the debtor if he has not signed, after default, a statement renouncing or modifying his rights under this subsection. In the case of consumer goods, no other notice need be

given. In other cases, notice shall be sent to any other secured party and any holder of a subordinate lien from whom the secured party has received, before sending his notice to the debtor or before the debtor's renunciation of his rights, written notice of a claim of an interest in the collateral. If the secured party receives objection in writing from a person entitled to receive notification within twenty-one (21) days after the notice was sent, the secured party must dispose of the collateral under Section 9-504. In the absence of such written objection, the secured party may retain the collateral in satisfaction of the debtor's obligation.

Laws 1961, p. 180, § 9-505; Laws 1981, c. 194, § 37.

Chattel Mortgages ⇨ 162.

Pledges ⇨ 53 et seq.

Sales ⇨ 479.

§ 9-506. Debtor's Right to Redeem Collateral

At any time before the secured party has disposed of collateral or entered into a contract for its disposition under Section 9-504 or before the obligation has been discharged under Section 9-505(2) the debtor or any other secured party may unless otherwise agreed in writing after default redeem the collateral by tendering fulfillment of all obligations secured by the collateral as well as the expenses reasonably incurred by the secured party in retaking, holding and preparing the collateral for disposition, in arranging for the sale, and, to the extent provided in the agreement and not prohibited by law, his reasonable attorneys' fees and legal expenses.

Laws 1961, p. 181, § 9-506.

Chattel Mortgages ⇨ 293 et seq.

Pledges ⇨ 50, 51.

Sales ⇨ 481.

§ 9-507. Secured Party's Liability for Failure to Comply With This Part

(1) If it is established that the secured party is not proceeding in accordance with the provisions of this part disposition may be ordered or restrained on appropriate terms and conditions. If the disposition has occurred, the debtor or any person entitled to notification, other than the holder of a subordinate lien that is not a security interest, or whose security interest has been made known to the secured party prior to the disposition has a right to recover from the secured party any loss caused by a failure to comply with the provisions of this part. If the collateral is consumer goods, the debtor has a right to recover, in any event, an amount not less than the credit service charge plus ten percent (10%) of the principal amount of the debt or the time price differential plus ten percent (10%) of the cash price.

(2) The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the secured party is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the secured party either sells the collateral in the usual manner in any recognized market

therefor or if he sells at the price current in such market at the time of his sale or if he has otherwise sold in conformity with reasonable commercial practices among dealers in the type of property sold, he has sold in a commercially reasonable manner. The principles stated in the two preceding sentences with respect to sales also apply as may be appropriate to other types of disposition. A disposition which has been approved in any judicial proceeding or by any bona fide creditors' committee or representative of creditors shall conclusively be deemed to be commercially reasonable, but this sentence does not indicate that any such approval must be obtained in any case nor does it indicate that any disposition not so approved is not commercially reasonable. Laws 1961, p. 181, § 9-507; Laws 1981, c. 194, § 38.

Chattel Mortgages ⇐ 162 et seq.

Pledges ⇐ 28 et seq.

Sales ⇐ 481.

ARTICLE 10.—EFFECTIVE DATE AND REPEALER

Sec.

10-101 to 10-103. Repealed.

10-104. Laws Not Repealed.

§§ 10-101 to 10-103. Repealed by Laws 1980, c. 68, § 1, emerg. eff. April 10, 1980.

From:

Laws 1961, pp. 181, 182, §§ 10-101 to 10-103.

§ 10-104. Laws Not Repealed

The article on Documents of Title (Article 7) does not repeal or modify any laws prescribing the form or contents of documents of title or the services or facilities to be afforded by bailees, or otherwise regulating bailees' businesses in respects not specifically dealt with herein; but the fact that such laws are violated does not affect the status of a document of title which otherwise complies with the definition of a document of title (Section 1-201).

Laws 1961, p. 182, § 10-104.

ARTICLE 11.—TRANSITIONAL PROVISIONS

11-101. Preservation of Old Transition Provision.

11-102. Transition to This act; General Rule.

11-103. Transition Provision on Change of Requirement of Filing.

11-104. Transition Provision on Change of Place of Filing.

11-105. Required Refilings.

11-106. Transition Provisions as to Priorities.

11-107. Presumption that Rule of Law Continues Unchanged.

§ 11-101. Preservation of Old Transition Provision

The provisions of Section 10-103 of this title shall continue to apply to this act, and for this purpose, the U.C.C. prior to this act and after this act shall be considered one continuous statute.

Laws 1981, c. 194, § 39.

§ 11-102. Transition to This act; General Rule

Transactions validly entered into after December 31, 1962, and before October 1, 1981 and which were

subject to the provisions of the U.C.C. prior to this act, and which would be subject to this act, as amended if they had been entered into after the effective date of this act and the rights, duties and interests flowing from such transactions remain valid after the latter date and may be terminated, completed, consummated or enforced as required or permitted by this act. Security interests arising out of such transactions which are perfected when this act becomes effective shall remain perfected until they lapse as provided herein, and may be continued as permitted by this act, except as stated in Section 11-104.

Laws 1981, c. 194, § 40.

Section 1 of Laws 1981, S.J.R. No. 19 provides as follows:

"It is hereby declared that the intent of the Legislature when enacting House Bill No. 1289 was that the dates expressed as October 1, 1980, in Section 40 and Section 42, subsections 1 and 4, should read October 1, 1981, and that the dates now contained in these sections are scrivener's errors which should be corrected in the appropriate manner."

§ 11-103. Transition Provision on Change of Requirement of Filing

A security interest for the perfection of which filing or the taking of possession was required under the U.C.C. prior to this act and which attached prior to the effective date of this act but was not perfected shall be deemed perfected on the effective date of this act if this act permits perfection without filing or authorizes filing in the office or offices where a prior ineffective filing was made.

Laws 1981, c. 194, § 41.

§ 11-104. Transition Provision on Change of Place of Filing

(1) A financing statement or continuation statement filed prior to October 1, 1981, which shall not have lapsed prior to that date shall remain effective for the period provided in the unamended version of the U.C.C., but for not less than five (5) years after the filing.

(2) With respect to any collateral acquired by the debtor subsequent to the effective date of this act, any effective financing statement or continuation statement described in this section shall apply only if the filing or filings are in the office or offices that would be appropriate to perfect the security interests in the new collateral under the provisions of this act.

(3) The effectiveness of any financing statement or continuation statement filed prior to the effective date of this act may be continued by a continuation statement as permitted by this act, except that if this act requires a filing in an office where there was no previous financing statement, a new financing statement conforming to Section 11-105 shall be filed in that office.

(4) If the record of a mortgage of real estate would have been effective as a fixture filing of goods described therein if this act had been in effect on the date of recording the mortgage, the mortgage