

OCU CLE
November 16, 1984
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EXECUTING, PERFECTING & PRIORITIES OF
SECURITY INTERESTS IN REAL ESTATE FIXTURES

Definitions, Contents & Perfection

I. DEFINITIONS

A. UCC

"(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." (12A § 9-313)

B. Property Law

"A thing is deemed to be affixed to land when it is attached to it by roots, as in the case of trees, vines or shrubs, or imbedded in it, as in the case of walls, or permanently resting upon it, as in the case of buildings, or permanently attached to what is thus permanent, as by means of cement, plaster, nails, bolts or screws." (60 § 7)

II. CONTENTS

A. Financing Statement Information

1. Name of debtor (12A §§9-402(1), (3), (5) & (7))¹
2. Name of secured party
3. Signed by debtor
4. Address of secured party
5. Address of debtor
6. Statement of types of or description of the items of collateral
7. Legal description (12A § 9-401A (1))²

B. Financing Statement Execution

1. Signature of debtor (12A §§ 9-402(2) & (5))

C. Financing Statement Acknowledgment

1. Acknowledgment of debtor (12A § 9-313(1)(b) and 12A §§ 9-402(1) & (5))³

D. General

1. Security Agreement can be used as financing statement if it complies with financing statement requirements (12A § 9-402(1))

2. "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" (12A § 9-402(1))

3. "A financing statement substantially complying with the requirements of this section is effective even

though it contains minor errors which are not seriously misleading." (12A § 9-402(8)) ("All that is required of financing statement filed to give a party priority in collateral is notice sufficient to place the inquiring party on guard to further inquiry," headnote from Consolidated Equipment Sales, Inc. v. First Bank & Trust Co. of Guthrie, Okl., 627 P2d 432 (1981))

III. PERFECTION

A. Attachment

"1. ...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." (12A §§ 9-203(1) & (2))

B. Filing Process

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." (12A § 9-403(1))

2. "...a filed financing statement is effective for a period of five (5) years from the date of filing." (12A § 9-403(2))

3. "Except as provided in subsection (7) of this section [i.e., mineral and mineral leasehold mortgage] 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." (12A § 9-403(4))

C. Filing Location

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

* * *

(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 9-103.1 of this title, 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;" (emphasis added) (12A § 9-401(1)(b))

2. "(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." (12A §§ 9-401A(1) & (2))

3. "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." (12A § 9-402(6))

4. "Notwithstanding the preceding subsections of this section, and subject to subsection (3) of Section 9-302, the proper place and manner to file in order to perfect a security interest in collateral, including fixtures, of a transmitting utility is the office of the Secretary of State according to the provisions of Sections 17 and 18 of Title 46 of the Oklahoma Statutes. This filing constitutes a fixture filing (Section 9-313) as to the collateral described therein which is or is to become fixtures." (12A § 9-401(5))

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NOTES :

1. § 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.

2. § 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. § 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.