

§9-1334. Priority of security interests in fixtures and crops

(1). A security interest under this Article may be created in goods that are fixtures or may continue in goods that become fixtures. A security interest does not exist under this Article in ordinary building materials incorporated into an improvement on land.

[PL 1999, c. 699, Pt. A, §2 (NEW); PL 1999, c. 699, Pt. A, §4 (AFF).]

(2). This Article does not prevent creation of an encumbrance upon fixtures under real property law.

[PL 1999, c. 699, Pt. A, §2 (NEW); PL 1999, c. 699, Pt. A, §4 (AFF).]

(3). In cases not governed by subsections (4) to (8), a security interest in fixtures is subordinate to a conflicting interest of an encumbrancer or owner of the related real property other than the debtor.

[PL 1999, c. 699, Pt. A, §2 (NEW); PL 1999, c. 699, Pt. A, §4 (AFF).]

(4). Except as otherwise provided in subsection (8), a perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property and:

(a). The security interest is a purchase-money security interest; [PL 1999, c. 699, Pt. A, §2 (NEW); PL 1999, c. 699, Pt. A, §4 (AFF).]

(b). The interest of the encumbrancer or owner arises before the goods become fixtures; and [PL 1999, c. 699, Pt. A, §2 (NEW); PL 1999, c. 699, Pt. A, §4 (AFF).]

(c). The security interest is perfected by a fixture filing before the goods become fixtures or within 20 days thereafter. [PL 1999, c. 699, Pt. A, §2 (NEW); PL 1999, c. 699, Pt. A, §4 (AFF).]

[PL 1999, c. 699, Pt. A, §2 (NEW); PL 1999, c. 699, Pt. A, §4 (AFF).]

(5). A perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if:

(a). The debtor has an interest of record in the real property or is in possession of the real property and the security interest:

(i) Is perfected by a fixture filing before the interest of the encumbrancer or owner is of record; and

(ii) Has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner; [PL 1999, c. 699, Pt. A, §2 (NEW); PL 1999, c. 699, Pt. A, §4 (AFF).]

(b). Before the goods become fixtures, the security interest is perfected by any method permitted by this Article and the fixtures are readily removable:

(i) Factory or office machines;

(ii) Equipment that is not primarily used or leased for use in the operation of the real property; or

(iii) Replacements of domestic appliances that are consumer goods; [PL 1999, c. 699, Pt. A, §2 (NEW); PL 1999, c. 699, Pt. A, §4 (AFF).]

(c). The conflicting interest is a lien on the real property obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this Article; or [PL 1999, c. 699, Pt. A, §2 (NEW); PL 1999, c. 699, Pt. A, §4 (AFF).]

(d). The security interest is:

(i) Created in a manufactured home in a manufactured-home transaction; and

(ii) Perfected pursuant to a statute described in section 9-1311, subsection (1), paragraph (b). [PL 1999, c. 699, Pt. A, §2 (NEW); PL 1999, c. 699, Pt. A, §4 (AFF).]

[PL 1999, c. 699, Pt. A, §2 (NEW); PL 1999, c. 699, Pt. A, §4 (AFF).]

(6). A security interest in fixtures, whether or not perfected, has priority over a conflicting interest of an encumbrancer or owner of the real property if:

(a). The encumbrancer or owner has, in an authenticated record, consented to the security interest or disclaimed an interest in the goods as fixtures; or [PL 1999, c. 699, Pt. A, §2 (NEW); PL 1999, c. 699, Pt. A, §4 (AFF).]

(b). The debtor has a right to remove the goods as against the encumbrancer or owner. [PL 1999, c. 699, Pt. A, §2 (NEW); PL 1999, c. 699, Pt. A, §4 (AFF).]
[PL 1999, c. 699, Pt. A, §2 (NEW); PL 1999, c. 699, Pt. A, §4 (AFF).]

(7). The priority of the security interest under subsection (6), paragraph (b) continues for a reasonable time if the debtor's right to remove the goods as against the encumbrancer or owner terminates.

[PL 1999, c. 699, Pt. A, §2 (NEW); PL 1999, c. 699, Pt. A, §4 (AFF).]

(8). 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 a recorded record of the mortgage so indicates. Except as otherwise provided in subsections (5) and (6), a security interest in fixtures is subordinate to a construction mortgage if a record of the mortgage is recorded before the goods become fixtures and the goods become fixtures before the completion of the construction. A mortgage has this priority to the same extent as a construction mortgage to the extent that it is given to refinance a construction mortgage.

[PL 1999, c. 699, Pt. A, §2 (NEW); PL 1999, c. 699, Pt. A, §4 (AFF).]

(9). A perfected security interest in crops growing on real property has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property.

[PL 1999, c. 699, Pt. A, §2 (NEW); PL 1999, c. 699, Pt. A, §4 (AFF).]

SECTION HISTORY

PL 1999, c. 699, §A2 (NEW). PL 1999, c. 699, §A4 (AFF).

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