

TITLE 5: UNIFORM COMMERCIAL CODE
DIVISION 9: SECURED TRANSACTIONS, ETC.

§ 9313. Priority of Security Interests in Fixtures.

(1) In this section and in the provisions of chapter 4 of this division [5 CMC § 9401 et seq.] 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 accordance with the provisions of 5 CMC § 9401(1) and which conforms to the requirements of 5 CMC § 9402(5);

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

(3) This division 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 where:

(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 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 division; 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 division.

(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 where:

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

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(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 subsection (4)(a) 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 it is given to refinance 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 chapter 5 of this division [5 CMC § 9501 et seq.], 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.

Source: PL 3-56, § 1 (§ 9313).