

2016 Kansas Statutes

84-9-334. Priority of security interests in fixtures and crops. (a) **Security interest in fixtures under this article.** 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.

(b) **Security interest in fixtures under real-property law.** This article does not prevent creation of an encumbrance upon fixtures under real property law.

(c) **General rule: Subordination of security interest in fixtures.** In cases not governed by subsections (d) through (h), 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.

(d) **Fixtures purchase-money priority.** Except as otherwise provided in subsection (h), 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:

- (1) The security interest is a purchase-money security interest;
- (2) the interest of the encumbrancer or owner arises before the goods become fixtures; and
- (3) the security interest is perfected by a fixture filing before the goods become fixtures or within 20 days thereafter.

(e) **Priority of security interest in fixtures over interests in real property.** A perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if: (1) The debtor has an interest of record in the real property or is in possession of the real property and the security interest:

- (A) Is perfected by a fixture filing before the interest of the encumbrancer or owner is of record; and
- (B) has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner;

(2) before the goods become fixtures, the security interest is perfected by any method permitted by this article and the fixtures are readily removable:

- (A) Factory or office machines;
- (B) equipment that is not primarily used or leased for use in the operation of the real property; or
- (C) replacements of domestic appliances that are consumer goods;

(3) 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

(4) the security interest is:

- (A) Created in a manufactured home in a manufactured-home transaction; and
- (B) perfected pursuant to a statute described in K.S.A. 2016 Supp. 84-9-311(a)(2), and amendments thereto.

(f) **Priority based on consent, disclaimer, or right to remove.** 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:

(1) The encumbrancer or owner has, in an authenticated record, consented to the security interest or disclaimed an interest in the goods as fixtures; or

(2) the debtor has a right to remove the goods as against the encumbrancer or owner.

(g) **Continuation of paragraph (f)(2) priority.** The priority of the security interest under paragraph (f)(2) continues for a reasonable time if the debtor's right to remove the goods as against the encumbrancer or owner terminates.

(h) **Priority of construction mortgage.** 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 (e) and (f), 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.

(i) **Priority of security interest in crops.** 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.

(j) **Subsection (i) prevails.** Subsection (i) prevails over any inconsistent provisions of law of this state.

History: L. 2000, ch. 142, § 54; L. 2002, ch. 159, § 15; May 23.