

554.9334 Priority of security interests in fixtures and crops.

1. *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.

2. *Security interest in fixtures under real property law.* This Article does not prevent creation of an encumbrance upon fixtures under real property law.

3. *General rule — subordination of security interest in fixtures.* In cases not governed by subsections 4 through 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.

4. *Fixtures purchase-money priority.* 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;
- b. the interest of the encumbrancer or owner arises before the goods become fixtures; and
- c. the security interest is perfected by a fixture filing before the goods become fixtures or within twenty days thereafter.

5. *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:

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

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

- (2) has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner;

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

- (1) factory or office machines;
- (2) equipment that is not primarily used or leased for use in the operation of the real property; or

- (3) replacements of domestic appliances that are consumer goods;

- 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

- d. the security interest is:

- (1) created in a manufactured home in a manufactured-home transaction; and

- (2) perfected pursuant to a statute described in section 554.9311, subsection 1, paragraph “b”.

6. *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:

- 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

- b. the debtor has a right to remove the goods as against the encumbrancer or owner.

7. *Continuation of subsection 6, paragraph “b”, priority.* 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.

8. *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 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.

9. *Priority of security interest in crops.* Except as provided in subsection 10, 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.

10. *Agricultural liens prevail.* The provisions of this Article regarding agricultural liens prevail over any inconsistent provisions of subsection 9.

2000 Acts, ch 1149, §54, 187

Referred to in §554.9109