



STATE OF KANSAS

## Office of the Attorney General

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**Curt T. Schneider**  
Attorney General

December 23, 1975

ATTORNEY GENERAL OPINION NO. 75-475

Mr. Don J. Knappenberger  
Assistant County Attorney  
Stafford County Courthouse  
St. John, Kansas 67576

Re: Uniform Commercial Code--Financing Statements--Duties  
of Filing Officer

Synopsis: The register of deeds, as filing officer under the Uniform Commercial Code, has no duty to make an independent search to determine the correctness of the identification of a record owner of real estate recited on a financing statement which is presented for filing and which conforms to K.S.A. 1974 Supp. 84-9-402(5), as amended by ch. 514, L. 1975. Financing statements enumerated in that section, and fixture filings, must be filed in the alphabetical general real estate mortgage index, and are not required to be filed in the numerical index. The uniform fee for a financing statement presented for filing which conforms in its physical dimensions to forms approved by the Kansas Secretary of State is \$1.00.

\* \* \*

Dear Mr. Knappenberger:

You inquire concerning K.S.A. 84-9-402 (1) and (5) as amended by 1975 Senate Bill No. 27, found at ch. 514, § 25, L. 1975.

Subparagraph (1) of this section, as amended, provides in pertinent part thus:

"A financing statement shall be in a form prescribed by the secretary of state and shall give the names of the debtor and the secured party, shall be signed by the debtor, shall give an address of the secured party from which information concerning the security interest may be obtained, shall give a mailing address of the debtor and shall contain a statement indicating the types, or describing the items of collateral . . . . 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 84-9-103, or when the financing statement is filed as a fixture filing (section 84-9-313) and the collateral is goods which are or are to become fixtures, the statement must also comply with subsection (5)."

Subsection (5) states thus:

"A financing statement covering timber to be cut or covering minerals or the like (including oil and gas) or accounts subject to subsection (5) of section 84-9-103, or a financing statement filed as a fixture filing (section 84-9-313) where the debtor is not a transmitting utility, must show that it covers this type of collateral, *must contain a legal description of the real estate concerned and the name of the record owner of the real estate concerned.*" [Emphasis supplied.]

The underscored language does not apply to a financing statement covering crops growing or to be grown. A legal description of the real estate concerned, and the name of the record owner thereof, is required to be included in financing statements covering timber to be cut, minerals or the like, including oil and gas, and accounts subject to K.S.A. 84-9-103(5), and financing statements filed as fixture filings, under K.S.A. 84-9-313.

It should be pointed out that subsection (1) quoted above requires that a financing statement covering crops growing or to be grown

to contain "a description of the real estate concerned," whereas financing statements covering timber to be cut, minerals, and other collateral enumerated in subparagraph (5) must contain a "legal description of the real estate concerned and the name of the record owner of the real estate concerned." A similar distinction is made in the form set out in subsection (3) of this section, in items 2 and 3 thereof.

A financing statement covering crops, thus, is not required to contain a *legal* description of the real estate, unlike financing statements described in subsection (5) of K.S.A. 84-9-402 as amended. It is not clear if the omission to require a legal description in the instance of crops was intentional or inadvertent. Certainly, however, the omission is a consistent one, reflected in the differing information required in items 2 and 3 of the form set forth in subsection (3) of this section. The omission is also reflected in the indexing requirements made specifically applicable to financing statements covering timber to be cut, minerals or the like, including oil and gas, accounts subject to K.S.A. 84-9-103, or goods which are or are to become fixtures. As to these financing statements, new subsection (7) of K.S.A. 1974 Supp. 84-9-403, as amended, states thus:

"When a 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 84-9-103, or indicates that it covers goods which are or are to become fixtures and contains the information required by section 84-9-402, *the filing officer, other than the secretary of state, shall also index the statement according to the name of the record owner of the real estate in the general real estate mortgage index.*" [Emphasis supplied.]

You ask, first, concerning the duties of the register of deeds to determine the true record owner. As you point out, the financing statement must disclose the record owner. You raise the question, however, whether the register of deeds should accept the statement on the face of the financing statement, or whether it is the duty of the register of deeds to search records in that office and elsewhere, such as in the probate court, to determine if the recitation is correct and who is the true record owner. The duties of the filing officer are entirely ministerial. The register of deeds, as the filing officer, has no duty to make an independent search to verify the correctness of the identification

of the record owner stated in a financing statement presented for filing. Any financing statement which is required to contain that information and which does not may not be accepted for filing. If that information is included, however, the financing statement is formally sufficient, so far as that requirement is concerned, and the filing officer has no duty other than to accept it for filing.

Secondly, you inquire whether the filing officer must index fixture filings and other similar filings in the alphabetical general real estate mortgage index or in the numerical tract index for mortgages. As indicated above in new subsection (7) of K.S.A. 1974 Supp. 84-9-403, as amended, quoted in full above, financing statement subject thereto must be filed in the alphabetical general real estate mortgage index according to the name of the record owner of the real estate. K.S.A. 1974 Supp. 84-9-313 (1) (b), as amended by section 22 of the bill, states thus:

"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 84-9-402."

Thus, filing in the alphabetical general real estate mortgage index is required, and filing in the numerical index is not. Indeed, references to the numerical index were deleted from K.S.A. 1974 Supp. 84-9-403(4), and from the form as prescribed in amended form by subsection (3) of K.S.A. 1974 Supp. 84-9-402 as amended. Careful search techniques by interested parties should minimize the instances whereby such filing places an unjustified cloud on the title of the record owner.

Lastly, you inquire concerning the appropriate fees to be assessed for filing under K.S.A. 1974 Supp. 84-9-403, as amended, which provides thus, in pertinent part:

"The uniform fee for filing and indexing and for stamping a copy furnished by the secured party to show the date and place of filing for an original financing statement, any amendments thereto or for a continuation statement shall be *one dollar (\$1) if the statement is in the standard form prescribed by the secretary of state and otherwise shall be two dollars (\$2) . . . .*"

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You question whether, if a financing statement is presented for filing which does not bear a notation that it has been approved by the Secretary of State, the register of deeds must charge \$2.00, rather than \$1.00. We have discussed this matter with the Secretary of State, and have construed the phrase "standard form" to refer to the physical dimensions of the form presented for filing. If a financing statement is presented for filing which conforms to the physical dimensions of the form approved by the Secretary of State, it is our opinion that only \$1.00 may be charged. Thus, the form approved by the secretary of state of a sister state may be accepted for filing at the \$1.00 charge so long as its dimensions conform to those approved by the Kansas Secretary of State, and thus require no special handling to be indexed.

Yours very truly,



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CTS:JRM:kj

cc: The Honorable Elwill M. Shanahan  
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