



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

May 17, 1977

ATTORNEY GENERAL OPINION NO. 77-158

Lynette Keddie
Register of Deeds
Stafford County Courthouse
St. John, Kansas 67576

RE: Uniform Commercial Code - Secured Transactions -
Oil and Gas - Fixture Filings - Place of Recording
and Indexing

SYNOPSIS: Under the Uniform Commercial Code, a financing statement which lists "fixtures" as security must be filed and indexed by the Register of Deeds in the general land records where mortgages on real estate are filed, and under the UCC this constitutes an effective filing of a financing statement. Oil and gas properties, pledged a security in a financing statement, are considered "fixtures" by the UCC. There is no duty for the Register of Deeds, when filing and indexing a fixture filing in the general land records, to file and index such instrument in addition in the UCC regular chattel file, if only "fixtures" are pledged as security. But if the instrument combines both fixtures and regular chattels as security, then the Register of Deeds must file and index the instrument in both places.

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Dear Ms. Keddie:

You submit the first page of a Deed of Trust Security Agreement and Financing Statement, which meets the requirements of K.S.A. 1976 Supp. 84-9-402(6) for a financing statement to be filed as a "fixture filing", and you ask if, besides recording and indexing this instrument in your general land records, it is your duty also to file and index this instrument in your Uniform Commercial Code financing statement files?

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This security agreement appears to pledge only oil and gas properties as security. Oil and gas meet the definition of "goods" which are "fixtures", as defined in K.S.A. 1976 Supp. 84-9-313(1)(a). Subsection (b) which follows immediately thereafter says: "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 ..."

K.S.A. 1976 Supp. 84-9-401(1)(b) states the proper place to file in order to perfect a security interest: "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, then in the office where a mortgage on the real estate would be filed or recorded;".

Your question is answered by the specific wording of K.S.A. 1976 Supp. 84-9-402(6) which says: "A mortgage is effective as a financing statement filing from the date of its recording ..." The key word is "effective". The Uniform Commercial Code is very complex, and the statutes have been boiled down to the least number of words. Following most sections there is a Kansas and Official UCC Comment. These comments have been published right in the statute books, because they are most helpful to ascertain legislative intent.

In the 1976 Supp. following 84-9-402(6) there is an Official UCC Comment "6", which reads:

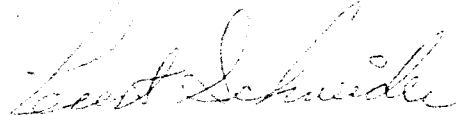
"6. A real estate mortgage may provide that it constitutes a security agreement with respect to fixtures (or other goods) in conformity with this Article. Combined mortgages on real estate and chattel are common and useful for certain purposes. This section goes further and makes provision that the recording of the real estate mortgage (if it complies with the requirements of a financing statement) shall constitute the filing of a financing statement as to the fixtures (but not of course, as to the other goods). Section 9-403(6) makes the usual five-year maximum life for financing statements inapplicable to real estate mortgages which operate as financing statements under Section 9-402(6), and they are effective for the duration of the real estate recording.

Of course, if a combined mortgage covers chattels which are not fixtures, a regular chattel filing is necessary and subsection (6) is inapplicable to such chattels. Likewise, filing as a "fixture filing" provided in Section 9-401 does not apply to true chattels."

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It is our opinion that the Register of Deeds has no duty, when filing in the general land records a real estate mortgage effective as a financing statement filed as a fixture filing, to file such instrument in addition in the Register of Deeds UCC regular chattel file, when "fixtures" are the only security given. If the financing statement combines both fixtures and true chattels as security, then the instrument must be filed and indexed in both places. An example might be where oil and gas properties are pledged, and in addition an oil tanker truck is listed as collateral. The fixture filing is not effective under the UCC as to the truck. As for the truck, the instrument must also be filed in the UCC regular chattel file.

Very truly yours,



CURT T. SCHNEIDER
Attorney General

CTS:CJM:gw