



STATE OF KANSAS

## Office of the Attorney General

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**Curt T. Schneider**  
Attorney General

February 24, 1978

ATTORNEY GENERAL OPINION NO. 78- 91

Rosalee Sprick  
Register of Deeds  
Rooks County Courthouse  
Stockton, Kansas 67669

RE: Uniform Commercial Code - Financial Statements -  
Fixture Filing - Failure to Name Title Owner of  
Real Estate - Duties of Filing Officer.

SYNOPSIS: While the duties of the Register of Deeds are ministerial, and there is no duty or obligation to make an independent search to verify the correctness of a UCC financing statement listing of the record owner of real estate, yet whenever the Register of Deeds has positive knowledge that the record title owner's name is misstated, then the financing statement may not be accepted for filing. UCC fixture filing statements are filed in the alphabetic general real estate mortgage index in the name of the record title owner of the real estate. Whenever request is made to file a fixture statement in the numerical land record index, then it shall be considered a mortgage lien running with the real estate, and the mortgage registration fee collected before such recording is made.

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Dear Ms. Sprick:

You report that a lending institution, undertaking to file a Uniform Commercial Code financing statement as a fixture filing with oil and gas properties as collateral, has put in the name of the debtor, an oil and gas company, as the "record owner of the real estate". You say you personally know the name of the record title owner, and you ask if you should file the financing statement when there is a clear misstatement of fact upon it?

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We first visited about this over long distance and we advised that in our opinion you should not accept for filing such a statement when you know personally that there exists a misstatement of the record title owner of the real estate. You did not accept it, and we have since received a lengthy letter from the attorney for the lending institution, resubmitting the statement for filing, and claiming that the debtor is an "owner" of the real estate because of an oil and gas lease which grants the lessee an "interest" in the real estate, citing several Kansas Supreme Court decisions, including National Bank of Tulsa v. Warren, 177 Kan. 281 (1955). You now ask our formal opinion.

First of all, we reaffirm our earlier opinion, No. 75-475, that the Register of Deeds, in filing a UCC financing statement as a fixture filing, has a duty that is ministerial and need not, "make an independent search to verify the correctness of the identification of the record owner stated". But that opinion also added that, where the statement does not contain the required information, as to record owner, it "may not be accepted for filing."

In the situation you present, it is our opinion that it would frustrate legislative intent of K.S.A. 1977 Supp. 84-9-402(5) and 84-9-403(7) if you were knowingly to file in the alphabetic general real estate mortgage index a financing statement under the name of one who is not the record title owner of the real estate described in the statement.

The policy and scope of the UCC Article on Secured Transactions says: "Except as otherwise provided in section 84-9-104 on excluded transactions, this article applies (a) to any transaction (regardless of its form) which is intended to create a security interest in personal property or fixtures ..." K.S.A. 1977 Supp. 84-9-102. Then, turning to 84-9-104, it says: "This article does not apply ... (j) except to the extent that provision is made for fixtures in section 84-9-313, to the creation or transfer of an interest in or lien on real estate, including a lease or rents thereunder;".

K.S.A. 1977 Supp. 84-9-313 provides:

"Priority of security interests in fixtures. (1) In this section and in the provisions of part 4 of this article referring to fixture filing, unless the context otherwise requires

(a) goods are "fixtures" when affixing them to real estate so associates them with the real estate that, in the absence of any agreement or understanding with his vendor as to the goods, a purchaser of the real estate with knowledge of interests of others of record, or in possession, would reasonably consider the goods to have been purchased as part of the real estate;

(b) 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;"

A study of the Official UCC Comments, paragraphs 5, 6, 7 and 8 after the above section, convinces us that the UCC requirement, that the financing statement set forth the name of the record owner of the real estate, means the record owner of marketable title. This is done to make certain that, when real estate lenders and title companies are examining the chain of title to a specific tract of land, they will have little difficulty in locating relevant fixture security interests applicable. Comment #5, for instance, says: "This possibility of a filing against a debtor who is not in the real estate chain of title makes it necessary to require the furnishing of the name of a record owner in such cases. See Sections 9-402(3), item 3; 9-402(5); 9-403(7)."

Kansas has a "Marketable Record Title Act" in K.S.A. 58-3401 et seq. An "owner" must have a chain or root of title for forty years or more. Mortgagees, lienholders, attaching creditors are only "Persons dealing with land". K.S.A. 58-3402(c).

We are convinced that the words "record owner of the real estate" means the owner of marketable record title. When a fixture filing lists such record title owner, then real estate lenders and title companies, when researching title of real estate for a prospective purchaser, would be apprised of the existence of any fixture encumbrance.

The lender here, in trying to substitute the name of oil company lessee debtor for the "owner" of the real estate, is pursuing an improper course to encumber the title to real estate with a debt lien. If this be the purpose, then a forthright mortgage by the lessee debtor can be filed against the lessee's interest to protect the lender. This kind of mortgage is recognized by the UCC as effective as a financing statement filed as a fixture filing. K.S.A. 1977 Supp. 84-9-402(6). Authority to do so is the very case, National Bank of Tulsa v. Warren, supra, which the lender has cited. But, as this case says, in

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so doing, the mortgagee lender is liable for payment of the Kansas mortgage registration fee.

States, which recognize minerals before severance as personal property, present problems in fixture filings, which must be resolved locally. K.S.A. 1977 Supp. 84-9-105(c) Official comment No. 3. For taxation purposes Kansas does recognize all leased oil and gas property and equipment, including the reserves still in the ground, as personal property. K.S.A. 79-329 et seq. But a producing lease for oil or gas does "run" with the land because the lease contains rights of ingress and egress to produce and remove the production. This is an interest in the land, which the lessee owns. If a lender to the Kansas oil and gas lessee wants the right to step into the shoes of the lessee and take over a producing lease on a specific tract of land in case of default of payment of the debt, then the lender must file an instrument in the numerical index of the land records and pay the mortgage registration fee assessed by K.S.A. 79-3101 et seq.

Very truly yours,



CURT T. SCHNEIDER  
Attorney General

CTS:CJM:gw