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STATE OF

Office of the At

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*This opinion is
overruled in Attorney
General Opinion No. 80-196.*

Curt T. Schneider
Attorney General

ATTORNEY GENERAL OPINION NO. 78- 156

Mr. Judd Dent
Ford County Attorney
Ford County Courthouse
Box 995
Dodge City, Kansas 67801

RE: Uniform Commercial Code - Financing State-
ment - Security Interest In Real Estate Pur-
chase Contract - Recordability. K.S.A.
19-1204, 19-1205, 58-2221, 79-3101; 84-2-304(2);
K.S.A. 1977 Supp. 84-9-102(3), 84-9-313(7),
94-9-104(j), 84-9-402(b), and 84-9-501(4).

SYNOPSIS: The Uniform Commercial Code, on secured trans-
actions, applies only to transactions which
create a security interest in personal pro-
perty or fixtures as defined in the act. It
does not apply to the creation of a sale or
mortgage of real estate. Where a UCC financing
statement lists as collateral the assignment,
with right of reassignment, of borrower's
rights and interest in and to an unrecorded
purchase contract of specifically described
real estate, it cannot be received and filed
by the Register of Deeds.

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Dear Mr. Dent:

You forward four UCC financing statements which list as
collateral "assignment, with right of reassignment, of
borrowers rights and interest in and to real estate con-
tracts on the following described land:". Then, on line
"3b" of the form, there appears the exact legal description
of the land. You say such financing statements have been
offered to the Register of Deeds for filing in your county,
and you ask if this can be done?

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We understand that these real estate purchase contracts have not been filed of record and the mortgage registration tax paid, as required by K.S.A. 79-3101, which applies to all executory sales of real estate where complete performance is deferred for a period longer than ninety days.

In our opinion your Register of Deeds should not accept for UCC filing in her office a financing statement listing as collateral an assignment of a specific and unrecorded real estate contract of sale. The UCC file in the Register of Deed's office is maintained to give public notice of the existence of liens against personal property or fixtures as defined in the Act. It cannot be used to give public notice of a lien on specific real estate. To allow it would open an opportunity to evade the mortgage registration tax law.

What the lender here seeks is to put of record the pledge of rights in a real estate sales contract, with the right of reassignment of the borrower's interests in that contract. There is no mention whatever of personal property or fixtures. The UCC does not apply to transactions which involve a transfer of an interest in real estate. Existing Kansas laws relating to the recording of an interest in real estate and the taxation thereof are unaffected by the UCC. K.S.A. 84-2-304(2); K.S.A. 1977 Supp. 84-9-102(3); 84-9-104(j); 84-9-313(7); 84-9-402(6); 84-9-501(4).

There has been one case which held that an oil and gas leasehold interest, which had been assigned, was in fact a transfer of an interest in real estate. A mortgage, or assignment, of such interest is not subject to the provisions of UCC, citing K.S.A. 84-9-104(j). Ingram v. Ingram, 214 Kan. 415, 423, 521 P.2d 254 (1974).

Because of some peculiar Kansas statutes calling oil and gas personal property, there was some question as to whether an oil and gas lease was real or personal property. But it is unquestionable that a contract to sell real estate undertakes to transfer an interest in real estate and is excluded from the application of the UCC under K.S.A. 1977 Supp. 84-9-104(j).

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If a recording of a real estate sale contract is desired, so that the assignment thereof may also be put of record, and public notice given of the existence of such instruments, then the recording must be done in the land records of the Register of Deeds and indexed alphabetically in the name of the landowner and numerically under the legal description of the land. Only this way can real estate lenders and title companies follow ownership status of land with certainty. K.S.A. 58-2221 says "every instrument in writing ... whereby any real estate may be affected" shall be so recorded. K.S.A. 19-1204 and 19-1205 provides the method how mortgages shall be recorded and indexed by the Register of Deeds. K.S.A. 79-3101 et seq. details how mortgages of land which includes executory contracts, shall be taxed when so recorded. These laws make no exceptions.

Very truly yours,



CURT T. SCHNEIDER
Attorney General

CTS:CJM:gw

cc: Barry K. Gunderson
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