

1 **UNIFORM COMMERCIAL CODE - TECHNICAL**

2 **AMENDMENTS**

3 2001 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Lyle W. Hillyard**

6 **This act modifies the Uniform Commercial Code - Secured Transactions by correcting cross**
7 **references. This act takes effect on July 1, 2001.**

8 This act affects sections of Utah Code Annotated 1953 as follows:

9 AMENDS:

10 **70A-9a-334 (Effective 07/01/01)**, as enacted by Chapter 252, Laws of Utah 2000

11 *Be it enacted by the Legislature of the state of Utah:*

12 Section 1. Section **70A-9a-334 (Effective 07/01/01)** is amended to read:

13 **70A-9a-334 (Effective 07/01/01). Priority of security interests in fixtures and crops.**

14 (1) A security interest under this chapter may be created in goods that are fixtures or may
15 continue in goods that become fixtures. A security interest does not exist under this chapter in
16 ordinary building materials incorporated into an improvement on land.

17 (2) This chapter does not prevent creation of an encumbrance upon fixtures under real
18 property law.

19 (3) In cases not governed by Subsections (4) through (8), a security interest in fixtures is
20 subordinate to a conflicting interest of an encumbrancer or owner of the related real property other
21 than the debtor.

22 (4) Except as otherwise provided in Subsection (8), a perfected security interest in fixtures
23 has priority over a conflicting interest of an encumbrancer or owner of the real property if the
24 debtor has an interest of record in or is in possession of the real property and:

25 (a) the security interest is a purchase-money security interest;

26 (b) the interest of the encumbrancer or owner arises before the goods become fixtures; and

27 (c) the security interest is perfected by a fixture filing before the goods become fixtures

28 or within 20 days thereafter.

29 (5) A perfected security interest in fixtures has priority over a conflicting interest of an
30 encumbrancer or owner of the real property if:

31 (a) the debtor has an interest of record in the real property or is in possession of the real
32 property and the security interest:

33 (i) is perfected by a fixture filing before the interest of the encumbrancer or owner is of
34 record; and

35 (ii) has priority over any conflicting interest of a predecessor in title of the encumbrancer
36 or owner;

37 (b) before the goods become fixtures, the security interest is perfected by any method
38 permitted by this chapter and the fixtures are readily removable:

39 (i) factory or office machines;

40 (ii) equipment that is not primarily used or leased for use in the operation of the real
41 property; or

42 (iii) replacements of domestic appliances that are consumer goods;

43 (c) the conflicting interest is a lien on the real property obtained by legal or equitable
44 proceedings after the security interest was perfected by any method permitted by this chapter; or

45 (d) the security interest is:

46 (i) created in a manufactured home in a manufactured-home transaction; and

47 (ii) perfected pursuant to a statute described in Subsection 70A-9a-311(1)(b).

48 (6) A security interest in fixtures, whether or not perfected, has priority over a conflicting
49 interest of an encumbrancer or owner of the real property if:

50 (a) the encumbrancer or owner has, in an authenticated record, consented to the security
51 interest or disclaimed an interest in the goods as fixtures; or

52 (b) the debtor has a right to remove the goods as against the encumbrancer or owner.

53 (7) The priority of the security interest under Subsection (6)(b) continues for a reasonable
54 time if the debtor's right to remove the goods as against the encumbrancer or owner terminates.

55 (8) A mortgage is a construction mortgage to the extent that it secures an obligation
56 incurred for the construction of an improvement on land, including the acquisition cost of the land,
57 if a recorded record of the mortgage so indicates. Except as otherwise provided in Subsections (5)
58 and (6), a security interest in fixtures is subordinate to a construction mortgage if a record of the

59 mortgage is recorded before the goods become fixtures and the goods become fixtures before the
60 completion of the construction. A mortgage has this priority to the same extent as a construction
61 mortgage to the extent that it is given to refinance a construction mortgage.

62 (9) A perfected security interest in crops growing on real property has priority over a
63 conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest
64 of record in or is in possession of the real property.

65 Section 2. **Effective date.**

66 This act takes effect on July 1, 2001.

Legislative Review Note
as of 1-24-01 11:35 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel