

70A-9a-334 Priority of security interests in fixtures and crops.

- (1) A security interest under this chapter may be created in goods that are fixtures or may continue in goods that become fixtures. A security interest does not exist under this chapter in ordinary building materials incorporated into an improvement on land.
- (2) This chapter does not prevent creation of an encumbrance upon fixtures under real property law.
- (3) In cases not governed by Subsections (4) through (8), a security interest in fixtures is subordinate to a conflicting interest of an encumbrancer or owner of the related real property other than the debtor.
- (4) Except as otherwise provided in Subsection (8), a perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property and:
 - (a) the security interest is a purchase-money security interest;
 - (b) the interest of the encumbrancer or owner arises before the goods become fixtures; and
 - (c) the security interest is perfected by a fixture filing before the goods become fixtures or within 20 days thereafter.
- (5) A perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if:
 - (a) the debtor has an interest of record in the real property or is in possession of the real property and the security interest:
 - (i) is perfected by a fixture filing before the interest of the encumbrancer or owner is of record; and
 - (ii) has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner;
 - (b) before the goods become fixtures, the security interest is perfected by any method permitted by this chapter and the fixtures are readily removable:
 - (i) factory or office machines;
 - (ii) equipment that is not primarily used or leased for use in the operation of the real property; or
 - (iii) replacements of domestic appliances that are consumer goods;
 - (c) the conflicting interest is a lien on the real property obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this chapter; or
 - (d) the security interest is:
 - (i) created in a manufactured home in a manufactured-home transaction; and
 - (ii) perfected pursuant to a statute described in Subsection 70A-9a-311(1)(b).
- (6) A security interest in fixtures, whether or not perfected, has priority over a conflicting interest of an encumbrancer or owner of the real property if:
 - (a) the encumbrancer or owner has, in an authenticated record, consented to the security interest or disclaimed an interest in the goods as fixtures; or
 - (b) the debtor has a right to remove the goods as against the encumbrancer or owner.
- (7) The priority of the security interest under Subsection (6)(b) continues for a reasonable time if the debtor's right to remove the goods as against the encumbrancer or owner terminates.
- (8) A mortgage is a construction mortgage to the extent that it secures an obligation incurred for the construction of an improvement on land, including the acquisition cost of the land, if a recorded record of the mortgage so indicates. Except as otherwise provided in Subsections (5) and (6), a security interest in fixtures is subordinate to a construction mortgage if a record of the mortgage is recorded before the goods become fixtures and the goods become fixtures before the completion of the construction. A mortgage has this priority to the same extent as a construction mortgage to the extent that it is given to refinance a construction mortgage.

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

Amended by Chapter 132, 2001 General Session