

**OPINION NO. 85-041****Syllabus:**

1. Pursuant to R.C. 1309.40(D), a county recorder must index a financing statement, which covers crops growing or to be grown on land which is not owned by the debtor, in the record of financing statements under the name of the debtor and in the real estate mortgage records under the name of the record owner. The recorder is not required to index such a financing statement in the real estate mortgage records under the name of the debtor.
2. A county recorder must, pursuant to R.C. 317.18 and R.C. 1309.40(D), index a financing statement, which covers crops growing or to be grown on land which is not owned by the debtor, in the real estate mortgage records under the name of every record owner. If there is more than one record owner, the name of each record owner must be entered by the recorder in the direct index, and the recorder must enter in the reverse index the name of the first record owner, followed by the phrase, "and others," or an equivalent phrase.

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**To: Charles L. Bartholomew, Wyandot County Prosecuting Attorney, Upper Sandusky, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, August 8, 1985**

I have before me your request for my opinion concerning the interpretation of R.C. 1309.40. I have rephrased your questions as follows:

1. Must a county recorder index a financing statement, which covers crops growing or to be grown on land which is not owned by the debtor, in the real estate mortgage records under the name of the debtor in addition to indexing the financing statement under the name of the record owner or record lessee?

2. Is it sufficient for the county recorder to index a financing statement, which covers crops growing or to be grown on land which is not owned by the debtor, in the real estate mortgage records under the name of one record owner in situations where there are two or more record owners, or must the financing statement be indexed under the names of all record owners?

In order for me to resolve your questions I must analyze pertinent provisions of both R.C. Chapter 1309, which governs secured transactions, and R.C. Chapter 317, which sets forth the duties of a county recorder.

With certain exceptions not relevant herein, a secured creditor must, in order to perfect his security interest in collateral, file a financing statement. R.C. 1309.21. R.C. 1309.39 sets forth the information which must be included in a financing statement, and division (E) of R.C. 1309.39 reads as follows:

A financing statement covering crops growing or to be grown or timber to be cut or minerals or the like, including oil and gas, or accounts subject to division (E) of section 1309.03 of the Revised Code, or a financing statement filed as a fixture filing pursuant to section 1309.32 of the Revised Code must show that it covers this type of collateral, must recite that it is to be indexed in the real estate records of the county in which the real estate is situated, and the financing statement must contain a description of the real estate sufficient if it were contained in a mortgage of the real estate to give constructive notice of the mortgage under the law of this state. If the debtor does not have an interest of record in the real estate, the financing statement must show the name of a record owner or record lessee. (Emphasis added.)

See R.C. 1309.39(A), (C). R.C. 1309.40 governs the filing of a financing statement. See R.C. 1309.40(A) ("[p]resentation for filing of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer constitutes filing" for purposes of R.C. Chapter 1309). Division (D) of R.C. 1309.40 states:

Except as provided in division (G) of this section, a filing officer<sup>1</sup> shall mark each statement with a consecutive file number and with the date and hour of filing and shall hold the statement or a microfilm or other photographic copy thereof for public inspection. In addition the filing officer shall index the statements according to the name of the debtor and shall note in the index the file number and the address of the debtor given in the statement. In addition to the indexing required in the previous sentence, statements covering crops growing or to be grown or timber to be cut or minerals or the like, including oil and gas, or accounts subject to division (E) of section 1309.03 of the Revised Code, or a financing statement filed as a fixture filing pursuant to section 1309.32 of the Revised Code shall also be indexed in the real estate mortgage records by the filing officer according to the name of the debtor or, if the financing

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<sup>1</sup> The filing officer, for purposes of filing a financing statement covering crops, is the county recorder. Pursuant to R.C. 1309.38(A)(2), the proper place to file in order to perfect a security interest in farm products is "in the office of the county recorder in the county of the debtor's residence. . .and in addition when the collateral is crops, growing or to be grown, in the office of the county recorder in the county where the land is located." See generally 1962 Op. Att'y Gen. No. 3289, p. 723; 1962 Op. Att'y Gen. No. 3072, p. 473. Pursuant to R.C. 317.13, the county recorder must "record in the proper record. . .all deeds, mortgages, plats, or other instruments of writing required or authorized to be recorded, presented to him for that purpose." See R.C. 317.12 (financing statements shall have a separate series of file numbers and shall be filed separately).

statement shows the record owner or record lessee to be other than the debtor, then according to the name of the record owner or record lessee given in the statement. The fee to be charged for indexing financing statements in the real estate mortgage records shall be two dollars for each record owner or lessee listed in the statement, as provided in division (H) of section 317.32 of the Revised Code. (Emphasis and footnote added.)

R.C. 1309.40(D) requires the county recorder to index a financing statement in the record of financing statements under the name of the debtor. Additionally, if a financing statement covers crops, then R.C. 1309.40(D) requires the county recorder to index the statement in the real estate mortgage records according to the name of the debtor. If a financing statement which covers crops shows that the owner or lessee of the real property upon which the crops are grown is not the debtor, then R.C. 1309.40(D) requires the county recorder to index the statement under the name of the record owner or record lessee of the real property. See generally R.C. 317.18 (requiring the county recorder to "make and keep up general alphabetical indexes, direct and reverse, of all the names of both parties to all instruments theretofore received for record by him"). R.C. 1309.40(D) does not, however, require that the recorder must also index the statement under the name of the debtor.

In order to find that a county recorder has the duty to index a filing statement in the real estate mortgage records under the names of both the debtor and the record owner, it would be necessary to substitute the word "and" for the emphasized word "or" in the following phrase of R.C. 1309.40(D): "statements covering crops growing or to be grown. . . shall also be indexed in the real estate mortgage records by the filing office: according to the name of the debtor or, if the financing statement shows the record owner or record lessee to be other than the debtor, then according to the name of the record owner or record lessee given in the statement." As was stated in In Re Estate of Marrs, 158 Ohio St. 95, 99, 107 N.E.2d 148, 150-51 (1952):

In its usual sense and meaning the word, "or," connotes the alternative-one or the other of two designated things.

However, an examination of the authorities shows that under certain conditions the word, "or," in a legislative enactment can be construed to read "and," and that the word, "and," can likewise be construed to read "or." The word, "and," or, "or," will not be given its literal meaning where such meaning would do violence to the evident intent and purpose of the lawmakers and the other meaning would give effect to such intent. Contrariwise, the words should not be treated as interchangeable when their accurate and literal meaning does not render the sense dubious, and the fact that the terms of the legislative enactment when given their literal meaning may prove onerous in some instances is not sufficient to warrant a court in arbitrarily changing plain and unambiguous language employed by the legislative body in the enactment. (Emphasis added.)

See R.C. 1.02(F) (" '[a]nd' may be read 'or,' and 'or' may be read 'and' if the sense requires it") (emphasis added). The purpose of requiring the filing officer to index financing statements covering crops in the real estate mortgage records is so that the financing statement will fit into the real estate search system. Official Comment 5 to U.C.C. 9-402 [R.C. 1309.39]; Official Comment 4 to U.C.C. 9-403 [R.C. 1309.40]. Those who are searching for interests in real property have no need to search the mortgage records under the name of a debtor when such debtor is not the owner of the real property, and when the financing statement is indexed under the name of the owner of the property. A search of the mortgage records under the name of the record owner will reveal the existence of any financing statements covering crops growing on the real property. Thus, the sense of R.C. 1309.40(D) does not require that the word "and" be substituted for the word "or" in the phrase quoted above, and I conclude that a financing statement covering crops growing on land which is not owned by the debtor must be indexed in the record of financing statements under the name of the debtor and in the mortgage records under the name of the record owner. R.C. 1309.40 does not require a financing statement

covering crops to be indexed in the mortgage records under the name of the debtor where the owner<sup>2</sup> or lessee of the real property upon which the crops are grown is not the debtor.

I turn now to your second question, whether the county recorder must index a financing statement, which covers crops growing or to be grown on land which is not owned by the debtor, in the mortgage records under the names of all of the record owners, or whether it would suffice to index the statement under the name of only one record owner. As discussed above, R.C. 1309.40(D) requires the recorder to index a financing statement which covers crops growing on land which does not belong to the debtor "according to the name of the record owner or record lessee given in the statement." Although the term "record owner" is stated in R.C. 1309.40(D) in the singular, R.C. 1.43(A) provides that, in construing a statute, the singular includes the plural. See Ohio Sand and Gravel Co. v. Masheter, 176 Ohio St. 327, 199 N.E.2d 573 (1964).

Further, R.C. 317.18 requires that "all the names of both parties" to instruments received by the recorder be kept in the alphabetical indexes maintained by the recorder pursuant to that section. R.C. 317.18 reads in part:

The name of each grantor shall be entered in the direct index under the appropriate letter, followed on the same line by the name of the grantee, or, if there is more than one grantee, by the name of the first grantee followed by "and others" or their [its] equivalent. The name of each grantee shall be entered in the reverse index under the appropriate letter, followed on the same line by the name of the grantor, or, if there is more than one grantor, by the name of the first grantor followed by "and others" or their [its] equivalent.  
(Emphasis added.)

If there is more than one grantor, R.C. 317.18 requires the name of every grantor to be entered in the direct index, and the name of the first grantor followed by the phrase "and others," or an equivalent phrase, to be entered in the reverse index. The name of the record owner of property upon which crops covered by a financing statement are growing is indexed in the mortgage index as the grantor. 1965 Op. Att'y Gen. No. 65-113. Thus, if there is more than one record owner, each name must be entered by the recorder in the direct index, and the recorder must enter in the reverse index the name of the first record owner, followed by some indication that there is more than one record owner.

I am aware that R.C. 1309.39(E) provides that if the debtor does not have an interest of record in the real estate upon which the crops covered by a financing statement are growing, then "the financing statement must show the name of a record owner or record lessee" (emphasis added), and that R.C. 1309.40(D) indicates that the financing statement is then to be indexed in the mortgage records under the name of the record owner given in the financing statement. The use of the indefinite article, "a," in R.C. 1309.39(E) would appear to indicate that the name of only one record owner need be included in the financing statement, and thus indexed in the mortgage records. See Webster's New World Dictionary 1 (2d college ed. 1978) (defining "a" as: "1. one; one sort of"); 1983 Op. Att'y Gen. No. 83-067. In light of the specific requirements of R.C. 317.18, however, I must conclude that the financing statement must include the name of all record owners and be indexed under the name of every record owner.

In conclusion, it is my opinion, and you are so advised, that:

1. Pursuant to R.C. 1309.40(D), a county recorder must index a financing statement, which covers crops growing or to be

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<sup>2</sup> The official version of the Uniform Commercial Code 9-403(7) requires fixture filings and the like to be indexed in the mortgage records under the name of the debtor and the name of the owner of record. See Comment-Variations from U.C.C. following R.C. 1309.40 (Page's 1979).

grown on land which is not owned by the debtor, in the record of financing statements under the name of the debtor and in the real estate mortgage records under the name of the record owner. The recorder is not required to index such a financing statement in the real estate mortgage records under the name of the debtor.

2. A county recorder must, pursuant to R.C. 317.18 and R.C. 1309.40(D), index a financing statement, which covers crops growing or to be grown on land which is not owned by the debtor, in the real estate mortgage records under the name of every record owner. If there is more than one record owner, the name of each record owner must be entered by the recorder in the direct index, and the recorder must enter in the reverse index the name of the first record owner, followed by the phrase, "and others," or an equivalent phrase.