

OPINION NO. 96-036

Syllabus:

Pursuant to R.C. 1309.32, a county recorder is required to accept for filing a financing statement filed as a fixture filing that purports to cover a manufactured home which is or is to become a fixture.

To: R. Alan Corbin, Brown County Prosecuting Attorney, Georgetown, Ohio
By: Betty D. Montgomery, Attorney General, June 12, 1996

You have requested an opinion concerning the duties of a county recorder. Specifically, you wish to know whether the county recorder is required to accept for filing a financing statement filed as a fixture filing on a manufactured home.

Resolution of your question requires a consideration of the laws relating to the perfection of security interests in manufactured homes. Manufactured homes are considered motor vehicles for purposes of R.C. Chapter 4505, governing certificates of title for motor vehicles.¹ R.C. 4505.01(A)(2). Without a certificate of title, manufacturer's or importer's certificate, or a salvage certificate, a manufactured home cannot be purchased or transferred. See R.C. 4505.03-.05; R.C. 4505.18-.19. A security interest in a manufactured home, unless it is being held in inventory, is recorded by notation on the certificate of title. R.C. 4505.13; see R.C. 1309.21(C); 1993 Op. Att'y Gen. No. 93-078 at 2-387. In this regard, R.C. 4505.13 states, in part:

(A)(1) Sections 1309.01 to 1309.50 and 1701.66 of the Revised Code do not permit or require the deposit, filing, or other record of a security interest covering a motor vehicle, except as provided in division (A)(2) of this section.

(2) Sections 1309.01 to 1309.50 of the Revised Code apply to a security interest in a motor vehicle held as inventory, as defined in division (D) of section 1309.07 of the Revised Code, for sale by a dealer, as defined in division (J) of section 4517.01 of the Revised Code. The security interest has priority over creditors of the dealer as provided in sections 1309.01 to 1309.50 of the Revised Code without notation of the security interest on a certificate of title or without the retention of a manufacturer's or importer's certificate.

(B)

The secured party, upon presentation of the security agreement to the clerk of the [court of common pleas] in which the certificate of title was issued, together with the certificate of title and the fee prescribed by section 4505.09 of the Revised Code, may have a notation of the security interest made [on the face of the certificate of title]. The clerk shall issue, over his signature and seal of office, a new original certificate of title from the automated title processing records that indicates the security interest and the date of the security interest.

Similarly, R.C. 1309.21, which provides for the perfection of security interests, states:

¹ R.C. 4501.01(O) defines a "manufactured home" for purposes of the motor vehicle certificate of title laws as follows:

any nonself-propelled vehicle transportable in one or more sections, [with specified dimensions], and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein.

(C) The filing of a financing statement otherwise required by sections 1309.01 to 1309.50 of the Revised Code² is not necessary or effective to perfect a security interest in property subject to:

....

(2) The following statutes of this state: sections 1548.20, 1701.66, 4505.13 except to the extent provided in division (A) of such section, and 4969.05 of the Revised Code.... (Footnote added.)

Accordingly, except when a manufactured home is held as inventory, the method of perfecting a security interest, filing a financing statement pursuant to R.C. 1309.01-.50, is not applicable to the manufactured home. *See generally* 1939 Op. Att'y Gen. No. 802, vol. II, p. 1025. The perfection of a security interest covering a manufactured home is made by notation on the manufactured home's certificate of title. *See In re Young*, 146 Bankr. 717 (S.D. Ohio 1992); *Commonwealth Loan Co. v. Berry*, 2 Ohio St. 2d 169, 207 N.E.2d 545 (1965).

Although a manufactured home is considered a motor vehicle for purposes of the motor vehicle certificate of title laws, a manufactured home may cease being a motor vehicle upon its annexation to real property. 1993 Op. Att'y Gen. No. 93-078. In that situation, the manufactured home becomes a fixture. *See* R.C. 1309.32(A)(1); R.C. 5701.02(C); 1993 Op. Att'y Gen. No. 93-078. The perfection of a security interest in a fixture requires the filing of a financing statement pursuant to R.C. 1309.32, which states in relevant part:

(A) In this section and in the provisions of sections 1309.38 to 1309.43 of the Revised Code referring to fixture filing, unless the context otherwise requires:

(1) Goods³ are "fixtures" when they become so related to particular real estate that an interest in them arises under real estate law.

(2) 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 division (E) of section 1309.39 of the Revised Code.⁴

² The provisions of R.C. 1309.01-.50 apply to any transaction, regardless of its form, which is intended to create a security interest in personal property or fixtures including goods, documents, instruments, general intangibles, chattel paper, or accounts; any sale of accounts or chattel paper; and security interests created by contract including pledge, assignment, chattel mortgage, chattel trust, trust deed, factor's lien, equipment trust, conditional sale, trust receipt, other lien or title retention contract, and lease or consignment intended as security. R.C. 1309.02.

³ As used in R.C. 1309.01-.50, "[g]oods" includes all things which are movable at the time the security interest attaches or which are fixtures under section 1309.32 of the Revised Code, but does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction." R.C. 1309.01(A)(8).

⁴ R.C. 1309.39(E) provides, in part, that

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

(B) A security interest under sections 1309.01 to 1309.50 of the Revised Code may be created in goods which are fixtures or may continue in goods which become fixtures, but no security interest exists under sections 1309.01 to 1309.50 of the Revised Code in ordinary building materials incorporated into an improvement on land.

....

(D)(1) A perfected security interest in fixtures has priority over the conflicting interest of an encumbrancer or owner of real estate where:

(a) The security interest is a purchase money security interest, the interest of the encumbrancer or owner arises before the goods become fixtures, the security interest is perfected by a fixture filing before the goods become fixtures or within ten days thereafter, and the debtor has an interest of record in the real estate or is in possession of the real estate; or

(b) The security interest is perfected by a fixture filing before the interest of the encumbrancer or owner is of record, the security interest has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner, and the debtor has an interest of record in the real estate or is in possession of the real estate; (Footnotes added.)

See also R.C. 1309.38(A)(3) (when a financing statement is filed as a fixture filing under R.C. 1309.32 and the collateral is goods which are or are to become fixtures, the proper place to file in order to perfect a security interest is in the office where the mortgage on the real estate is filed or recorded).

Pursuant to R.C. 317.08, mortgages on real estate are recorded in the county recorder's office. Accordingly, R.C. 1309.32 permits the filing in the county recorder's office of financing statements as fixture filings covering manufactured homes which are or are to become fixtures.

Moreover, when a fixture filing that meets the requirements of R.C. 1309.39 is presented to the county recorder for filing with the appropriate filing fee, the county recorder is required to accept the fixture filing for filing. *See* 1962 Op. Att'y Gen. No. 3289, p. 723. The county recorder is not required to determine whether the fixture filing submitted to him for filing is legally sufficient and binding upon the parties thereto, but need only determine whether the form submitted to him for filing as a fixture filing purports to cover goods which are or are to become fixtures. *See* 1962 Op. Att'y Gen. No. 3289, p. 723; 1962 Op. Att'y Gen. No. 3072, p. 473; *see also* 1963 Op. Att'y Gen. No. 668, p. 639. As stated in 1963 Op. Att'y Gen. No. 668, p. 639 at 641-42, which concluded that the county recorder must index in the existing real estate mortgage records any financing statement that complies with the requirements of R.C. 1309.39:

With respect to the question of whether a financial statement covers fixtures, the County Recorder is not concerned with the legal conclusion regarding whether

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.

any particular item is a fixture; he is concerned only with the presence or absence in the statement of a clear indication by the parties thereto that it is their intention that such statement shall cover items of property which are affixed or are to be affixed to certain real estate.

Section 1309.39(A), Revised Code, further specifies that if the financing statement covers any fixtures, "the statement *must* also contain a description of the real estate concerned *and* the name of the record owner or record [lessee] thereof." There is no statutory provision requiring the filing officer to go beyond the express terms of the financing statement for information in order to ascertain whether he has a duty to index the statement in the real estate mortgage records as provided in Section 1309.40(D), Revised Code.

It is, therefore, beyond the scope of the county recorder's functions as a purely ministerial officer to refuse to accept a fixture filing that purports to cover a manufactured home which is or is to become a fixture. *See* 1956 Op. Att'y Gen. No. 6400, p. 275

While it might be argued that R.C. 4505.13(A) and R.C. 1309.21(C) prohibit the county recorder from accepting fixture filings on manufactured homes, I believe that the language of these two sections does not authorize the recorder to refuse to accept fixture filings that purport to cover manufactured homes which are or are to become fixtures. The purpose of R.C. 4505.13(A) and R.C. 1309.21(C) is to prohibit the filing or recording of a security interest in a motor vehicle pursuant to R.C. 1309.01-.50. *See* 1939 Op. Att'y Gen. No. 802, vol. II, p. 1025. A financing statement filed as a fixture filing pursuant to R.C. 1309.32 does not constitute the filing of a security interest that covers a motor vehicle. Rather, fixture filings denote security interests in fixtures.

In addition, I find that the language of R.C. 1309.32 indicates that a perfected security interest in a manufactured home is no longer effective once the home becomes a fixture. *Cf. In re Beabout*, 110 Bankr. 883, 886 (S.D. Ill. 1990) (UCC 9-313⁵ makes it clear that a security interest in personal property is abrogated once the property is transformed into realty); *In re Valley Liquors, Inc.*, 103 Bankr. 961, 970 (N.D. Ill. 1989) (same). In such a situation, the priority of a security interest in a manufactured home is lost unless the secured party files its interest against the real estate by making a fixture filing. *See* R.C. 1309.32; *cf. In re Beabout*, 110 Bankr. at 887; *In re Valley Liquors, Inc.*, 103 Bankr. at 970. Thus, in order to ensure its priority as to manufactured homes that are to become fixtures, prudence dictates that a lender have its security interest noted on the manufactured home's certificate of title and file a fixture filing pursuant to R.C. 1309.32. *See In re Beabout*, 110 Bankr. at 887; *In re Valley Liquors, Inc.*, 103 Bankr. at 970.

Accordingly, neither R.C. 4505.13(A) nor R.C. 1309.21(C) prohibit the county recorder from accepting fixture filings on manufactured homes. As such, a county recorder is required to accept for filing a financing statement filed as a fixture filing that purports to cover a manufactured home which is or is to become a fixture.

⁵ R.C. Chapter 1309 is the Ohio analogue of Revised Article 9 of the Uniform Commercial Code (UCC), and R.C. 1309.32 corresponds to section 9-313 of the UCC.

Based upon the foregoing, it is my opinion and you are advised that, pursuant to R.C. 1309.32, a county recorder is required to accept for filing a financing statement filed as a fixture filing that purports to cover a manufactured home which is or is to become a fixture.