

**355.9-334 Priority of security interests in fixtures and crops.**

- (1) A security interest under this article may be created in goods that are fixtures or may continue in goods that become fixtures. A security interest does not exist under this article in ordinary building materials incorporated into an improvement on land.
- (2) This article does not prevent creation of an encumbrance upon fixtures under real property law.
- (3) In cases not governed by subsections (4) to (8) of this section, 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) of this section, 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 twenty (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:
    1. Is perfected by a fixture filing before the interest of the encumbrancer or owner is of record; and
    2. 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 article and the fixtures are readily removable:
    1. Factory or office machines;
    2. Equipment that is not primarily used or leased for use in the operation of the real property; or
    3. 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 article; or
  - (d) The security interest is:
    1. Created in a manufactured home in a manufactured-home transaction; and
    2. Perfected pursuant to a statute described in KRS 355.9-311(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) of this section 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) of this section, 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.

**Effective:** July 1, 2001

**History:** Created 2000 Ky. Acts ch. 408, sec. 74, effective July 1, 2001.