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## Amendments Affecting Perfection of Security Interests

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Four acts of the 72nd legislature make important changes in the manner of perfecting security interests in personal property.<sup>1</sup> Two of these acts<sup>2</sup> amend certain provisions of the Vehicle Code.<sup>3</sup> Another amends section 9302 of the Commercial Code.<sup>4</sup> Still another amends section 9401 of the Commercial Code.<sup>5</sup>

PERFECTION OF SECURITY INTERESTS  
IN VEHICLES AND ACCESSORIES

All of the foregoing acts bear upon the problem of perfecting security interests in vehicles for which certificates

of title are required to be issued and accessories attached to such vehicles. Procedures for handling applications for certificates of title are made an integral part of the techniques of perfection. As a result, the amended provisions of the Vehicle Code governing procedures for issuance of certificates of title take on new significance to secured parties with security interests in vehicles or accessories.

*Applications for and issuance of certificates of title.* As to the form of the application for a certificate of title, the Vehicle Code is amended to require that the names and addresses of any holders of security interests in the vehicle and in any accessories be stated in the application "in the order of their priority."<sup>6</sup> Also every application for a certificate of title which indicates the existence of a security interest must be "accompanied by a copy thereof which need not be signed."<sup>7</sup>

As to the form of the certificate of title, the Vehicle Code is amended to require that the face of the certificate of title shall contain a statement "of all security interests in the vehicle . . . or in any accessory thereon as set forth in the application and the date on which the application was filed."<sup>8</sup>

## AMENDMENTS AFFECTING PERFECTION OF SECURITY INTERESTS

### Article 9 of the Commercial Code.

1. Act No. 51, Public Acts of 1964, Act No. 235, Public Acts of 1964, Act No. 248, Public Acts of 1964, Act No. 250, Public Acts of 1964.

2. Act No. 51, Public Acts of 1964 and Act No. 248, Public Acts of 1964. Unfortunately these acts overlap. It would seem, however, that Act No. 248 will be regarded as controlling and discussion herein will be directed at the provisions of this Act.

3. M.C.L. §257.1 et seq., M.S.A. §9-1801 et seq.

4. Act No. 235, Public Acts of 1964.

5. Act No. 250, Public Acts of 1964.

6. Act No. 248, Public Acts of 1964.

7. *Ibid.*

8. *Ibid.*

By ROY L. STEINHEIMER, JR.

One of the experts of the nation on the Uniform Commercial Code, Professor Steinheimer was invited to prepare this article on some of the changes brought about by the 1964 legislature, effective August 28.



Applications for certificates of title are made a vital part of the procedures for creating and perfecting security interests in vehicles and accessories in the following situations:<sup>9</sup>

(1) Purchase money security interest created in connection with the transfer of a vehicle and accessories by a dealer to a non-dealer/transferee. Non-dealer/transferee must sign the application for a certificate of title. The application shall state all security interests in the vehicle. If the dealer has received written notice from a third party that the non-dealer/transferee has created or is creating a security interest in the vehicle, a statement of such security interest must be included in the application. Dealer must apply for issuance of a certificate of title on behalf of the non-dealer/transferee within fifteen days after delivery of the vehicle. A copy of the application (which need not be signed) must accompany the application. Upon receipt of the application and copy thereof, together with other necessary documents, the department<sup>10</sup> must indicate on the copy of the application the date and place of filing the application and must return the copy to the dealer. When issued, the department must deliver the certificate of title to the holder of the security interest named in the certificate.<sup>11</sup>

(2) Purchase money security interest created in connection with a transfer of a vehicle and accessories by a non-dealer/transferor to a non-dealer/transferee. The non-dealer/transferee must execute an application to name the holder of the security interest on the certificate of title. He must then cause the existing certificate of title (if it is

in his possession), the application and a copy thereof (which need not be signed) to be delivered to the holder of the purchase money security interest. The holder of the purchase money security interest must deliver these papers, together with other necessary documents, to the department. If there is a holder of a prior security interest who is in possession of the certificate of title at the time of the transfer, such holder is obligated to deliver possession of the certificate either to the holder of the subordinate security interest or, upon receipt of the application and a copy thereof, to the department. Either the non-dealer/transferee or the holder of the subordinate security interest can request the holder of the prior security interest to surrender possession of the certificate of title. Upon receipt of the application and copy thereof, together with other necessary documents, the department must indicate on the copy of the application the date and place of filing the application and return the copy to the person presenting it. The department shall then issue a new certificate setting forth the name and address of each holder of a security interest in the vehicle or accessories for which a termination statement has not been filed<sup>12</sup> and the date on which the application first stating such security interest was filed. The department shall deliver the certificate of title to the holder of the security interest for which an application was first filed.

9. Act No. 248, Public Acts of 1964 amending the Vehicle Code.

10. Division of driver and vehicle services of the office of the secretary of state.

11. Since the amendments to the Vehicle Code put the secured party in possession of the certificate of title, the Vehicle Code is further amended to provide that annual registration of vehicles and issuance of license plates will be based on the outstanding certificate of registration rather than the certificate of title.

12. Act No. 248, Public Acts of 1964, amending the Vehicle Code, places an obligation on the secured party to furnish a termination statement "in the form prescribed by the department" when the secured obligation is paid by the debtor. This should not be confused with the requirements of §9404 of the Commercial Code regarding termination statements where a financing statement has been filed. The termination statement required by the Vehicle Code, together with the certificate of title (if in the secured party's possession), must be delivered to the next subsequent secured party named in the certificate of title or, if none, to the debtor/owner of the vehicle. The certificate and termination statement must be delivered "within 10 days after demand and, in any event, within 30 days."

(3) Purchase money security interest created in accessories to be affixed to a vehicle. Application must be made to name the holder of the security interest in the accessories on the certificate of title. The procedures for application and issuance of the certificate of title are the same as in (2) above.

(4) Non-purchase money security interest created in a vehicle and accessories. Whenever a security interest is created in a vehicle and accessories by the owner thereof, application must be made to name the holder of the security interest on the certificate of title even though no transfer of ownership of the vehicle and accessories is involved. The procedures for application and issuance of the certificate of title are the same as in (2) above.

*Technique of perfection of security interests in vehicles and accessories.* Two filings are necessary to perfect a security interest in vehicles for which a certificate of title is required to be issued<sup>13</sup> and accessories affixed thereto:<sup>14</sup>

(1) An application for a certificate of title must be filed as described above with the secretary of state containing a statement of the security interest.<sup>15</sup>

(2) A financing statement must be

13. Does not include vehicles in a dealer's inventory.

14. These requirements appear as amendments to §9302 of the Commercial Code. Act No. 235, Public Acts of 1964.

15. Unfortunately there may be some confusion and uncertainty created by this provision. Act No. 235, Public Acts of 1964 which contains this provision requiring filing of applications for certificates of title with the secretary of state becomes effective on August 28, 1964. However, Act No. 248, Public Acts of 1964 which amends the Vehicle Code to establish the procedures for filing such applications with the secretary of state does not become effective until January 1, 1965. During the four months from September through December, the legislature has established a prerequisite to perfection of security interests in vehicles and accessories with which it is impossible to comply. Did the legislature intend that it should be impossible to perfect a security interest in such collateral during this period? If not, what is the proper method of perfection?

filed with the register of deeds "as provided in section 9401(1)."<sup>16</sup> Section 9401(1), as amended,<sup>17</sup> provides that when the collateral "is a vehicle which is not inventory held for sale for which a certificate of title is required to be issued" under the Vehicle Code, the financing statement must be filed "in the office of the register of deeds in the county of the debtor's residence or if the debtor has no residence in this state, in the office of the register of deeds in the county where the chief place of business of the debtor is located in this state, or if the debtor has no residence or place of business in this state, in the office of the register of deeds in the county where the vehicle is kept."<sup>18</sup>

PERFECTION OF SECURITY INTERESTS  
IN COLLATERAL OF CERTAIN TYPES  
OF BUSINESSES

Section 9302 of the Commercial Code is amended to establish special rules for perfecting security interests in collateral owned by certain types of businesses.<sup>19</sup> To qualify under these special rules the

16. Act No. 235, Public Acts of 1964 which amends §9302 of the Commercial Code.

17. Act No. 250, Public Acts of 1964.

18. There could be confusion under these amendments with respect to accessories. §9302(3) provides that the general filing provisions of the Commercial Code do not apply to "a vehicle which is not inventory held for sale for which a certificate of title is required to be issued." No mention is made of accessories. In lieu of the general filing provisions of the Commercial Code, §9302(4) then provides for the method of perfection which shall be used "in the case of a security interest in a vehicle which is not inventory held for sale as referred to in subsection (3) or an accessory as referred to therein." Unfortunately accessories are not "referred to therein." To perfect a security interest in accessories, §9302(4) requires the "filing of a financing statement with the register of deeds as provided in §9401(1)." §9401 then provides for the manner of filing a financing statement with the register of deeds "when the collateral is a vehicle" but no provision is made for filing a financing statement covering accessories affixed to the vehicle.

19. Act No. 235, Public Acts of 1964.

business must be conducted by a corporation. Furthermore the corporation must be engaged in the business of a railroad company, union depot company or "in transmitting, conveying, distributing or supplying steam, electricity or gas, natural or manufactured, or telephonic or telegraphic communication or crude oil or petroleum or products derived therefrom."<sup>20</sup>

The amendment provides that the general filing provisions contained in section 9401 of the Commercial Code do not apply to such corporations. Instead, special rules for perfection of security interests created by these corporations are established. It is provided that a "security interest in property of any description"<sup>21</sup> which is "created by a mortgage"<sup>22</sup> of such corporations shall be "recorded and filed" as follows:

(1) If the "mortgage" includes real estate, it must be recorded in the office of the register of deeds of each county in which any real estate described in the "mortgage" is situated.<sup>23</sup>

(2) If the "mortgage" includes any "rolling stock, movable equipment, machinery or other personal property or fixtures," the "mortgage" must be filed

in the office of the secretary of state.<sup>24</sup>

PERFECTION OF SECURITY INTERESTS  
IN VARIOUS TYPES OF COLLATERAL

Section 9401 of the Commercial Code is amended to establish new rules for filing financing statements to perfect security interests in various types of collateral.<sup>25</sup> The principal change consists of elimination of the dual filing requirements (secretary of state and register of deeds). Perfection as to some types of collateral now requires only local filing with the register of deeds. Perfection as to other types of collateral requires only central filing with the secretary of state.

(1) Local filing. The types of collateral as to which only a local filing is now required are as follows:

- (a) Equipment used in farming operations.<sup>26</sup>
- (b) Farm products.
- (c) Accounts, contract rights and general intangibles arising from or relating to the sale of farm products by a farmer.
- (d) Consumer goods.<sup>27</sup>
- (e) Fixtures.<sup>28</sup>

20. There may be difficulty defining the scope of the quoted language. Certainly public utilities engaged in the businesses described are covered. But the language need not necessarily be limited to public utilities. The language includes any corporation engaged in "supplying . . . crude oil or petroleum or products derived therefrom." Is a corporation engaged in operating filling stations or delivering fuel oil to retail customers, etc., covered by this language? The question is important because the techniques of perfection of security interests are radically different when a corporation falls within the compass of this language.

21. Does this include vehicles owned by such corporations?

22. The "mortgage" terminology is a bit incongruous in the Commercial Code.

23. Reference in the Commercial Code to methods of perfection of security interests in real estate is also incongruous. §9104(k) of the Commercial Code specifically excludes real estate transactions from the Commercial Code provisions.

24. Several items should be noted here. This provision for filing as to fixtures with the secretary of state is an exception to the general rule that fixture filings must be made in the office of the register of deeds. (See §9401). Observe that this amendment does not follow the notice filing concept found elsewhere in the Commercial Code. The "mortgage" or a copy thereof must be filed. Also all supplements or amendments to the "mortgage" must be filed. A financing statement cannot be used.

25. Act No. 250, Public Acts of 1964. This Act also amends the definition of "signed" in §1201(39) of the Commercial Code to make it clear that a carbon copy of a signature on a financing statement is sufficient for filing.

26. Automatic perfection of a purchase money security interest in farm equipment having a purchase price not in excess of \$2500 remains unchanged. (§9302)

27. Automatic perfection of a purchase money security interest in consumer goods remains unchanged. (§9302)

28. Except fixture collateral of certain types of businesses, e.g., railroad companies, etc.

The local filing (except crops and fixtures) is made in the office of the register of deeds in the county of the debtor's residence or, if the debtor is not a resident, in the office of the register of deeds in the county where the goods are kept.<sup>29</sup> If the collateral is crops, more than one local filing may be necessary. Filing is required in the office of the register of deeds in the county of the debtor's residence and in the office of the register of deeds in the

county on which the crops are growing or to be grown is located. Fixture filings are still made in the office where a mortgage on the real estate concerned would be filed or recorded.

(2) Central filing. As to all types of collateral other than those mentioned in (1) above, e.g., inventory, non-farm equipment, non-farm accounts, etc.,<sup>30</sup> only a central filing with the secretary of state is necessary.

29. Where is a filing made as to farm accounts, etc., of a non-resident debtor who operates a farm in this state?

30. Vehicles and accessories and collateral of certain types of businesses, e. g., railroad companies, etc., are not subject to the general filing provisions.



Since October of 1963, certain Justices of the Supreme Court have been furnishing the State Bar Journal with brief summaries of cases filed in the Supreme Court. The summaries have been published each month for the information of the Bar in the belief that lawyers whose clients' interests may be affected by the Supreme Court's decisions therein would seek leave to file *amicus curiae* briefs or to offer informal assistance to counsel of record to the end that the Supreme Court may be fully informed of all applicable law and fully advised of the consequences of its prospective judgments.

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