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COMMENTS

MOBILE HOME FINANCING UNDER THE UNIFORM COMMERCIAL CODE

Steven J. Harman

Soaring construction costs have made mobile homes an inexpensive alternative for potential home owners. As a result, lending institutions are awakening to the need for mobile home financing, and lawyers, representing the lenders, are awakening to the Uniform Commercial Code.¹ This comment explains how to secure the maximum Code protection for the financier.

THE MECHANICS OF CREATING AND PERFECTING A SECURITY INTEREST

Classify the Collateral

The first step to create a security interest under the Code is to classify the collateral. "Collateral" is any property, either personal or a fixture, subject to a security interest.² Selection of the proper classification for the collateral is extremely important, because the classification determines the method of perfecting the security interest.³

Mobile homes are "goods" within the meaning of Code section 87A-9-105(1)(f). "Goods" includes all things which are movable at the time the security interest attaches or which are fixtures . . ."⁴ Section 87A-9-109 classifies goods into four major categories: (1) consumer goods, (2) inventory, (3) farm products, and (4) equipment. These classifications are mutually exclusive,⁵ which means that the same goods cannot be both consumer goods and inventory in the hands of the same person. Goods can, however, be consumer goods in one person's hands and inventory in another's.⁶ Generally, it is the use to which the owner puts the goods which determines the classification.⁷

1. REVISED CODES OF MONTANA, tit. 87A (1947) [hereinafter cited as R.C.M. 1947]. Mobile home financing involves a ". . . transaction . . . which is intended to create a security interest in personal property or fixtures. . . ." Thus, chapter 9 of the Code applies. R.C.M. 1947, § 87A-9-102(a).

2. R.C.M. 1947, § 87A-9-105(1)(c).

3. R.C.M. 1947, § 87A-9-302.

4. R.C.M. 1947, § 87A-9-105(1)(f).

5. UNIFORM COMMERCIAL CODE § 9-109, Comment 2 (1962 version) [hereinafter cited as U.C.C.]. The "farm products" classification is not relevant here and so is not considered.

6. U.C.C. § 9-109, Comment 2 (1962 version).

7. U.C.C. § 9-109, Comment 2 (1962 version).

Other relevant classifications include motor vehicles in section 87A-9-302(1)(d) and fixtures in 87A-9-313. These classes are extremely significant when determining how to perfect a security interest in mobile homes, and will be considered separately.

A. Consumer Goods

A "good is a consumer good if [it] is used or bought for use primarily for personal, family or household purposes."⁸ On first impression, a mobile home purchased for use as a family dwelling would appear to be a consumer good. However, not all authorities agree with this classification, and at least one case, *In re Sprague*,⁹ has specifically rejected it. In *Sprague*, a secured party asserted that since a mobile home was a consumer good, a financing statement need not be filed to perfect his security interest.¹⁰ The referee rejected this contention, reasoning:

The legislature by adopting the term "consumer goods" cannot be inferred to have intended to "include all things which are movable at the time the security interest attaches," UCC § 9-105(1)(f), when purchased primarily for personal, family or household purposes UCC § 9-109(1) as there would have been no necessity for the use of the word "consumer."

"Consumer" is used as a limitation and must be applied in its ordinary sense . . .

Webster's New World Dictionary defines consume i.e., "to use up, eat, waste, destroy," and consumer i.e., "a person or thing that destroys, uses up or wastes something" and the items intended to fall under the purview of the UCC § 9-109(1) definition must be construed to be those which would logically fall under the ordinary definition of the term "consume" and "consumer." I cannot hold that the item in question so falls.¹¹

The referee concluded that the mobile home was a motor vehicle under the Code and therefore filing was required to perfect the

8. R.C.M. 1947, § 87A-9-109(1).

9. *In re Sprague*, 4 U.C.C. Rep. Serv. 702 (Ref. Dec. N.D. N.Y. 1966).

10. MCKINNEY'S CONSOLIDATED LAWS OF NEW YORK ANNOTATED, bk. 62½ pt. 3, § 9-302 (1964) provides:

(1) A financing statement must be filed to perfect all security interests except the following

(d) a purchase money interest in consumer goods; but filing is required to perfect such a security interest in a motor vehicle required to be licensed or registered in this state, and a filing in the place specified in paragraph (b) of subsection (1) of Section 9-401 is required to perfect, for the purposes of Section 9-313 only, such a security interest in a fixture;

11. *In re Sprague*, *supra* note 9 at 705, 706.

secured party's interest.¹² Some writers have criticized the referee's rationale, fearing future *ad hoc* decisions rejecting consumer goods as a classification for other types of collateral.¹³ Consequently, a mobile home financier should be cautious in selecting consumer goods as a classification.

B. Inventory

If a person holds mobile homes for sale or lease they constitute "inventory."¹⁴ Should an investment company floor plan an individual's stock of mobile homes, it would secure itself by taking a security interest in "inventory."¹⁵

C. Equipment

A mobile home constitutes "equipment" if it is used or bought for use primarily in business (including farming or a profession), or by a debtor who is a non-profit organization, or by a governmental subdivision or agency.¹⁶ Further, the "equipment" classification functions as a classification catch-all: if an item is not classified as "inventory," "farm products" or "consumer goods," it is "equipment."¹⁷ For example, a contractor purchasing a mobile home for use as a bunk house on job sites holds the collateral as equipment.

D. Fixtures

Fixtures are "goods" under the Code and constitute a separate

12. *Id.* at 707. *Accord*, In re Vinarsky, 4 U.C.C. Rep. Serv. 707 (Ref. Dec. N.D. N.Y. 1966), *aff'd* 287 F.Supp. 446, 5 U.C.C. Rep. Serv. 1042 (N.D. N.Y. 1968); In re Radny, 12 U.C.C. Rep. Serv. 583 (Ref. Dec. W.D. Mich. 1973); Albany Discount Corp. v. Mohawk Nat'l Bank, 54 Misc.2d 238, 282 N.Y.S.2d 401, 4 U.C.C. Rep. Serv. 669 (Sup. Ct. 1967), *aff'd* 30 App. Div.2d 919, 292 N.Y.S.2d 300 (1968), *aff'd* 28 N.Y.2d 222, 269 N.E.2d 809, 321 N.Y.S.2d 94, 8 U.C.C. Rep. Serv. 1310 (1971).

Maine has classified a mobile home as a consumer good. In re Williams, 10 U.C.C. Rep. Serv. 277 (Ref. Dec. D. Me. 1971); In re Pelletier, 5 U.C.C. Rep. Serv. 327 (Ref. Dec. D. Me. 1968). Maine's Code, however differs significantly from those of New York and Michigan, Maine has deleted section 9-302(1)(d) requiring a filing as to motor vehicles (*see*, note 10 *supra*), and Maine requires a financing statement be filed to perfect a security interest in consumer goods. MAINE REVISED STATUTES ANNOTATED, tit. 11, § 9-302 (1964). The Codes of New York and Michigan include 9-302(1)(d) and do not require a filing to perfect a purchase money security interest in consumer goods. MCKINNEY'S CONSOLIDATED LAWS OF NEW YORK ANNOTATED, bk. 62 ½, pt. 3, § 9-302 (1964); MICHIGAN STATUTES ANNOTATED § 19.9302 (1964). Montana's Code is similar to those of New York and Michigan. R.C.M. 1947, § 87A-9-302. Thus, it appears Montana courts would rely on New York and Michigan decisions regarding classification of a mobile home under the Code.

13. J. WHITE & R. SUMMERS, UNIFORM COMMERCIAL CODE, § 23-7 (1972).

14. R.C.M. 1947, § 87A-9-109(4).

15. Taylor Mobile Homes v. Founders Investment Corp., 7 U.C.C. Rep. Serv. 1363 (Fla. Dist. Ct. App. 1970).

16. R.C.M. 1947, § 87A-9-109(2).

17. R.C.M. 1947, § 87A-9-109(2).

collateral classification.¹⁸ A definition of fixtures is not provided by the Code but is determined by state law.¹⁹ Should inventory, equipment, consumer goods, or farm products become so attached to the soil that state law deems them a part of the realty, they are "fixtures."²⁰ R.C.M. 1947, Section 67-209 defines fixtures as follows:

A thing is deemed to be affixed to land when it is attached to it by roots, as in the case of trees, vines, or shrubs; or imbedded in it, as in the case of walls; or permanently resting upon it, as in the case of buildings; or permanently attached to what is thus permanent as by means of cement, plaster, nails, bolts or screws.²¹

Montana has never determined when a mobile home becomes a fixture.²² But, because of the impact this classification has on perfection and priorities, analysis of existing Montana fixture law is helpful.

The Montana supreme court has adopted the following tests to determine whether an item of personalty becomes a part of the realty:

(1) Whether what would otherwise be personal property has become a fixture by reason of its attachment to the soil is primarily a question of intention on the part of the person attaching it; (2) the attachment in the manner indicated in our Code sections above raises a presumption that the one who made the attachment intended the thing to become a part of the realty; this presumption however, is a disputable one; (3) as a general rule, the manner in which the attachment is made, the adaptability of the thing attached to the use to which the realty is applied and the intentions of the one making the attachment determines whether the thing attached is realty or personalty.²³

18. R.C.M. 1947, § 87A-9-105(1)(f).

19. R.C.M. 1947, § 87A-9-313(1).

20. R.C.M. 1947, § 87A-9-313(1).

21. R.C.M. 1947, § 67-209.

22. The Montana supreme court has dealt with mobile homes in other contexts. In *Timmerman v. Gabriel*, 155 Mont. 294, 470 P.2d 528 (1970) the court rejected defendant's contention that his 20 foot by 50 foot trailer placed on a permanent foundation was a permanent home and not a trailer within the meaning of a restrictive covenant excluding "trailers." In *Mecage v. Spartan Ins. Co.*, 156 Mont. 135, 477 P.2d 115 (1970) an insured contended that his trailer located on a permanent foundation on his own land, with two rooms built on, plus connections for sewer, water, power and telephone made it an "improvement" within the meaning of the "valued policy" statute in Montana. (R.C.M. 1947, § 40-4302). The insurance company opposed the insured on the basis that the insured should not be allowed to reap the benefits of paying a personal property tax on his trailer, while claiming it as an "improvement on real property" within the statute. The court held for the insured stating: ". . . the mobile home was clearly affixed to the land in that it rested on a permanent foundation and was connected to a sewer." *Id.* at 117.

23. *Montana Electric Co. v. Northern Valley Mining Co.*, 51 Mont. 266, 153 P. 1017, 1018 (1915).

The required subjective intent may be presumed from the “. . . character of the chattel, the manner and effect of its annexation, its adaptability to the use of the realty, the purpose to which it is put, the relation of the parties, the policy of the law, . . . and . . . the provisions of the contract.”²⁴

Applying similar tests the Seventh Circuit in *George v. Commercial Credit Corp.*,²⁵ has classified a mobile home as a fixture under the Code. The court considered the following factors as significant: the mobile home was 14 feet by 68 feet, weighed 15,000 pounds and was connected to a well and septic tank on land owned by the debtor. Further, it was placed on cement blocks with the wheels still attached although the debtor had made plans to have the wheels removed and a permanent foundation built, and it contained six rooms in which the debtor and his wife intended to live permanently.²⁶

Although *George* is good law for the facts it considered, it is important to note that the subjective intent is manifested by the particular facts of each case which demonstrate the permanent character of the personalty. For example, in *George* the mobile home was affixed to land owned by the homeowner, but it is not clear whether or not the result would differ if the owner placed the home on property leased for that purpose.

R.C.M. 1947, Section 67-209 requires that an item of personalty assume a “permanent” relationship with the land before it can become a fixture. Just how long personalty must remain before it will be considered permanent was reviewed in *Pritchard Petroleum Co. v. Farmers Co-op*:²⁷

‘Permanent’ does not imply that the annexation must be intended to be perpetual but rather that the article shall appear to be intended to remain fastened until worn out, until the purpose to which the realty is devoted has been accomplished, or until the article is superceded by another article more suitable for the purpose. It appears to be sufficient that it is intended to remain where placed as long as the land or buildings to which it is annexed may be used for the same purposes.²⁸

Thus, where a large platform rested on property leased for one year with no option to renew, the court determined that it was not a fixture, noting that the lease gave the platform a temporary rather

24. *Shipler v. Potomac Copper Co.*, 69 Mont. 86, 220 P. 1097, 1100 (1923).

25. *George v. Commercial Credit Corp.*, 440 F.2d 551, 8 U.C.C. Rep. Serv. 1315 (7th Cir. 1971).

26. *Id.* at 553.

27. *Pritchard Petroleum Co. v. Farmers Co-op*, 117 Mont. 467, 161 P.2d 526 (1945).

28. *Id.* at 531.

than permanent character.²⁹ Perhaps a longer lease would satisfy the permanency test. Therefore, it appears that a mobile home will be considered a fixture only where the owner places the home on his land, on a permanent foundation, connects it to sewer, water, and other utilities, and indicates that he will live there permanently.

E. Motor Vehicles

"Motor vehicles" constitutes a separate classification of collateral which is significant only when one is perfecting a security interest.³⁰ The term is not defined in the Code, and must therefore be defined by statutes outside the Code. Some states rely on definitions provided in their Motor Vehicle Codes.³¹

Section 53-104 of Montana's Motor Vehicle Code³² defines motor vehicle as including ". . . trailers, semitrailers, automobiles, auto trucks, motorcycles, cyclemotors, and all other vehicles propelled by their own power . . ." Section 53-107 states: "The term 'motor vehicle' includes automobiles, trucks, motorcycles, semitrailers, trailers and *house trailers*"³³ (emphasis added). Therefore, besides other possible classifications previously discussed, a mobile home is a "motor vehicle."³⁴

Create a Security Interest

After selecting the proper classification for a mobile home, the next step is to create a security interest.

The term "security interest" denotes a creditor's contractual interest in personal property or fixtures which secures the debtor's payment or performance of his obligation.³⁵ Creation of the security interest gives the secured party valuable rights as between the parties themselves and in regard to third persons.³⁶ Two statutes govern the creation of an enforceable security interest. Section 87A-9-204

29. *Cascade Electric Co. v. Associated Creditors*, 124 Mont. 370, 224 P.2d 146, 149 (1950). *Accord*, *Story Gold Dredging Co. v. Wilson*, 106 Mont. 166, 76 P.2d 73, 78 (1938).

30. R.C.M. 1947, § 87A-9-302(1)(d).

31. *See*, cases cited *supra*, note 12.

32. R.C.M. 1947, tit, 53.

33. In other contexts assorted types of mobile homes have been variously defined: R.C.M. 1947, § 69-2105(14) "mobile home," R.C.M. 1947, § 69-2105(15) "recreational vehicle;" R.C.M. 1947, § 84-6601(1) "mobile home;" R.C.M. 1947, § 84-6601(2) "house trailer."

34. Other jurisdictions defining a mobile home as a motor vehicle include: Nebraska (*In re Merrill*, 9 U.C.C. Rep. Serv. 755 (Ref. Dec. D. Neb. 1971), New York (*Albany Discount Corp. v. Mohawk Nat'l Bank*, *supra* note 12), Michigan (*In re Radny*, *supra* note 12), and Virginia (*In re Canter*, 8 U.C.C. Rep. Serv. 252 (Ref. Dec. E.D. Tenn. 1970). Wyoming does not classify a mobile home as a motor vehicle. OPINION OF ATTORNEY GENERAL OF WYOMING, No. 65, 2 U.C.C. Rep. Serv. 671 (August 12, 1963).

35. R.C.M. 1947, §§ 87A-1-201 (37), 87A-9-102.

36. *See*, R.C.M. 1947, § 87A-9-201 and U.C.C. § 9-201, Comment (1962 version).

determines when a security interest attaches and section 87A-9-203 determines when it becomes enforceable. 87A-9-204 provides:

A security interest cannot attach until there is agreement . . . that it attach and value is given and the debtor has rights in the collateral. It attaches as soon as all of the events in the preceding sentence have taken place unless explicit agreement postpones the time of attaching.

The statute requires an agreement for security. Apparently either an oral or written agreement will suffice. Also, value must be given, which occurs when the lender makes a binding promise to loan money.³⁷ Finally, the debtor must have "rights in the collateral," which are the contract rights he acquires when he enters into a contract with a dealer for the purchase of a mobile home.³⁸

There is a distinction between a security interest which has "attached" and one that is "enforceable." A security interest may attach without a writing, but for a security interest to be enforceable against the debtor or third parties, it is necessary either that the secured party possess the mobile home or that the parties enter into a written security agreement.³⁹ Possible anomalous results can be avoided by reducing the security agreement to writing.

The Code requires the security agreement to contain a description which reasonably identifies the particular mobile home.⁴⁰ The agreement must also indicate that the secured party gave value and that the debtor acquired rights in the mobile home.⁴¹ Further, it must be signed by the debtor,⁴² and under federal law, adequate Truth-in-Lending disclosures must be made.⁴³

37. R.C.M. 1947, § 87A-1-201(44)(a).

38. In re Pelletier, *supra* note 12 at 337.

39. This situation has arisen in New York. In *Recchio v. Manufacturers & Traders Co.*, 286 N.Y.S.2d 390, 4 U.C.C. Rep. Serv. 1133 (Sup. Ct. 1968) plaintiff delivered possession of a mobile home to a buyer under an oral agreement that the buyer would assume the payments and upon final payment ownership would be transferred to her. The court disregarded the anomaly between attached and enforceable security interests, holding this interest to be enforceable. On appeal the court reinstated the distinction between attached and enforceable security interests and reversed the lower court's ruling. *Recchio v. Manufacturers & Traders Co.*, 316 N.Y.S.2d 915, 8 U.C.C. Rep. Serv. 565 (App. Div. 1970). Section 9-203 of the 1972 version of the Code incorporates section 9-204 so that the security interest attaches when it becomes enforceable, thus doing away with the distinction mentioned. U.C.C. § 9-203 (1972 version).

40. R.C.M. 1947, §§ 87A-9-203(1)(b), 87A-9-110.

41. See, notes 37 and 38 *supra*. A real estate mortgage which includes fixtures drafted in light of real estate law and Code language can suffice as a security agreement. *George v. Commercial Credit Corp.*, *supra* note 25. However, certain disadvantages are apparent. The most obvious is that if the home is used as the debtor's residence the debtor is entitled to possession for one year after foreclosure. R.C.M. 1947, § 93-5841.

42. R.C.M. 1947, § 87A-9-203.

43. Truth in Lending Act, May 29, 1968, P.L. 90-321, §§ 101 to 114, 82 Stat. 146. For

Perfect the Security Interest

Once a security interest is created, the secured party should maximize his protection by taking the necessary steps to perfect his interest. There are three methods to perfect a security interest: (1) filing a financing statement; (2) retaining possession of the collateral; or (3) doing nothing.⁴⁴ The appropriate route is determined by the particular classification assigned to the collateral.

Section 87A-9-302 provides the method of perfection to be used with each classification. Section 87A-9-302(1) requires that a financing statement be filed to perfect all security interests except the following:

(a) a security interest in collateral in possession of the secured party under 87A-9-305;

(d) a purchase money security interest in consumer goods; but filing is required for a fixture under section 87A-9-313 or for a motor vehicle required to be licensed.

Since the mobile home financier does not usually retain possession of the collateral, most transactions will involve perfection of mobile home security interests pursuant to subsection (d).

Certainly a mobile home is a "motor vehicle" which must be licensed.⁴⁵ Therefore, there must be a filing to perfect a security interest in the mobile home. Generally, a financing statement is filed in the location specified in section 87A-9-401.⁴⁶ However, Montana has certificate of title laws covering motor vehicles, and transactions covered by such laws are exempt from the Code's filing requirement.⁴⁷ Thus, perfection of a security interest in a motor vehicle is accomplished *only* by filing the security agreement with

forms complying with Truth in Lending requirements, *see*, 1 TRUTH IN LENDING MANUAL ¶¶ 1.01 *et seq.* (3d ed. R. Clontz, Jr. 1973).

44. R.C.M. 1947, § 87A-9-302.

45. R.C.M. 1947, § 87A-9-302(1)(d).

46. R.C.M. 1947, § 87A-9-401 provides that the proper place to file in order to perfect a security interest is as follows:

(a) when the collateral is . . . consumer goods, then in the office of the county clerk and recorder in the county of the debtor's residence or if the debtor is not a resident of this state then in the office of the county clerk and recorder in the county where the goods are kept . . .

(b) when the collateral is goods which at the time the security interest attaches are or are to become fixtures, then in the office where a mortgage on the real estate concerned would be filed or recorded;

(c) in all other cases, in the office of the secretary of state.

The formal requisites of a financing statement are found at R.C.M. 1947, § 87A-9-402.

47. R.C.M. 1947, § 87A-9-302(3)(b).

the registrar of motor vehicles.⁴⁸ This exclusive method of perfecting security interests in motor vehicles is significant, as illustrated by the following example. An automobile could be classified as a "consumer good," "inventory" or "equipment" depending on its use. But filing in a place other than with the registrar of motor vehicles would be ineffective for purposes of perfecting a security interest in the automobile.⁴⁹ The same reasoning ought to apply where the collateral is classified as a fixture but is defined as a motor vehicle for perfection purposes. For instance, if a mobile home becomes so attached to the land that state law regards it as a fixture, it appears that perfection of a security interest in the home should be accomplished merely by filing with the registrar of motor vehicles. However, there is authority⁵⁰ indicating that if a mobile home becomes a fixture, it loses its status as a motor vehicle and perfection can only be established through filing a financing statement with the county clerk and recorder in the county where the home is situated.⁵¹ As one judge stated:

The trustee . . . errs when he asserts that the effect of the Motor Vehicle Code . . . is to foreclose the possibility of a mobile home ever becoming a fixture. The trustee points principally to (9-304(4)) which states in relevant part 'The method provided in this chapter of perfecting and giving notice of security interest subject to this chapter is exclusive. . . .' Rather than accepting a restrictive interpretation of the Motor Vehicle Code, we feel that the quoted provision, along with the other sections dealing with registration perfection of security interest [footnote omitted] do not apply to a mobile home, once it has become a fixture.⁵²

Filing as to fixtures would give persons searching real property titles notice of fixture interests, which is consistent with the Code's purpose in requiring fixture filing.⁵³ One writer, however, believes that

48. R.C.M. 1947, § 87A-9-302(4). R.C.M. 1947, § 53-110 requires a copy of the security agreement certified by a notary public to be filed with the registrar of motor vehicles. Note that a financing statement is not filed.

49. U.C.C. § 9-302, Comment 8 (1962 version).

50. *George v. Commercial Credit Corp.*, *supra* note 25 at 554; *In re Vinarsky*, *supra* note 12 at 710; *Albany Discount Corp. v. Mowhawk Nat'l Bank*, *supra* note 12 at 810; *OPINION OF THE ATTORNEY GENERAL OF KENTUCKY*, No. 64-267, 2 U.C.C. Rep. Serv. 194 (March 25, 1964).

51. R.C.M. 1947, § 87A-9-401(b). *See text supra* note 46. R.C.M. 1947, § 73-110 provides that any instrument affecting title to real property be filed with the county clerk and recorder in the county where the real estate is located. This filing will be hereinafter referred to as fixture filing.

52. *George v. Commercial Credit Corp.*, *supra* note 25 at 554.

53. U.C.C. § 9-401, Comment 2 (1962 version). Note that R.C.M. 1947, § 53-110(c) states that filing with the registrar of motor vehicles is constructive notice to subsequent encumbrancers. It is doubtful the legislature contemplated real estate encumbrancers when drafting this section.

once the security interest is perfected by filing with the registrar of motor vehicles, that perfection should continue even though the home becomes a fixture.⁵⁴ The solution, of course, is to file in two places: (1) file the security agreement with the registrar of motor vehicles in Deer Lodge, and (2) file a financing statement with the county clerk and recorder in the county where the mobile home rests. "To the secured creditor double filing is a nuisance, but no more than a nuisance."⁵⁵

POTENTIAL RISKS ASSUMED BY THE SECURED PARTY

A secured party with a perfected security interest in a mobile home may be defeated by certain interests arising outside the Code of which he is unaware. A good example is a lien.

Statutory liens are excluded from chapter 9 of the Code, except where section 87A-9-310 grants them priority. Section 87A-9-310 provides:

When a person in the ordinary course of his business furnishes services or materials with respect to goods subject to a security interest, a lien upon goods in the possession of such person given by statute or rule of law for such materials or services takes priority over a perfected security interest unless the lien is statutory and the statute expressly provides otherwise.

Unpaid workmen who have installed a mobile home or connected utilities to it might seek to assert either a mechanic's⁵⁶ or a possessory⁵⁷ lien. These liens, if valid, are prior to any perfected security interest in the mobile home.⁵⁸

A valid mechanic's lien is established where the materials supplied or labor performed relate to something which has become attached to and therefore a part of the realty.⁵⁹ Thus, the validity of the mechanic's liens depends on whether the mobile home is a fixture. If a mobile home becomes a fixture and a valid mechanic's lien is created, the lien is prior to both antecedent or subsequent security interests.

A possessory lien may be created if the mobile home retains its character as personalty.⁶⁰ However, as the name of the lien suggests,

54. R. HENSON, SECURED TRANSACTIONS UNDER THE UNIFORM COMMERCIAL CODE, § 8-4 (1973).

55. BENDER'S UNIFORM COMMERCIAL CODE SERVICE, 1 SECURED TRANSACTIONS 511 (1963).

56. R.C.M. 1947, § 45-501.

57. R.C.M. 1947, § 45-1106.

58. R.C.M. 1947, §§ 45-504, 45-506, 45-1106.

59. Cascade Electric Co. v. Associated Creditors, *supra* note 29 at 150. Cf. Barnes v. Montana Lumber etc. Co., 67 Mont. 481, 216 P. 335, 336 (1923); 57 C.J.S. *Mechanics Lien* § 21 (1948).

60. R.C.M. 1947, § 45-1106.

the workman must retain possession of the mobile home to establish a valid lien. Usually the unpaid workmen will not retain possession of a mobile home and so no lien will arise. In the unlikely case that possession is retained, a valid lien could be established and section 87A-9-310 would grant the lienor priority over any perfected security interest in the home.

A third type of lien is a landlord's lien which is created pursuant to a lease agreement.⁶¹ A mobile home located on leased property may be subject to a landlord's lien which attaches if the home owner defaults in rent payments.⁶² However, landlord's liens are expressly excluded from chapter 9 of the Code.⁶³ Priority of such a lien is determined under R.C.M. 1947, Section 45-201, which provides: "Other things being equal, different liens upon the same property have priority according to their creation." Thus, it appears the secured party, if he has perfected his security interest first, is prior to a landlord's interest in the mobile home.

Should the mobile home become affixed to the realty, a security interest in it, perfected by fixture filing, takes prior to: "(1) a creditor with a prior encumbrance or record on the real estate . . . ; (2) a creditor with a lien on the real estate subsequently obtained by judicial proceedings; and, (3) a subsequent purchaser for value of an interest in the real estate."⁶⁴ Without fixture filing, the secured party risks losing his priority over each of these creditors.

A mobile home may sustain a homestead where it is affixed to the land.⁶⁵ As a general rule homesteads are not liable for the debts of the holder of the homestead rights.⁶⁶ However, there are exceptions: "The homestead is subject to execution or forced sale in satisfaction of judgments obtained . . . (4) on debts secured by mortgages on the premises, executed and recorded before the declaration homestead was filed for record."⁶⁷ It could be reasonably argued that the above exception to the homestead exemption protects a secured party who has perfected his interest by fixture filing before the owner files for a homestead. But the secured party's rights on default are limited, since a judgment must be obtained as a prerequisite to sale.

61. *Barth v. Ely*, 85 Mont. 310, 278 P.2d 1002, 1005 (1929). See also, R.C.M. 1947, § 45-110.

62. *Barth v. Ely*, *supra* note 61.

63. R.C.M. 1947, § 87A-9-104(b). White and Summers argue that by negative implication of section 9-104(j), landlord's liens are included to the extent section 9-313 governs their priority. J. WHITE & R. SUMMERS, *supra* note 13 at § 25-10.

64. R.C.M. 1947, § 87A-9-313(4).

65. 40 AM.JUR.2d *Homestead* § 30 (1968).

66. R.C.M. 1947, § 33-129.

67. R.C.M. 1947, § 33-105(4).

If a lender seeks a security interest in a mobile home which is already part of a homestead, a waiver of the owner's homestead rights ought to be obtained.⁶⁸

Some of a secured party's collateral may be lost where built-in components are replaced. For example, if a local appliance dealer replaces a built-in stove in a mobile home, taking a purchase money security interest in the replacement, his interest is prior to an antecedent perfected security interest in the mobile home.⁶⁹ However, this loss is minor in comparison to the total value of the collateral.

CONCLUSION

By now a potential mobile home financier ought to be aware of several important factors which merit his consideration. First, the financier should determine the Code classification of the home by inquiring as to how the debtor intends to use the mobile home, where he intends to install it, and what interest he has in the land where it is to be installed. In order to avoid enforcement difficulties, the agreement for security should be reduced to writing. To insure maximum protection, the creditor's security interest should be perfected by filing as to motor vehicles *and* fixtures. Also, the secured party ought to obtain lien and homestead waivers wherever appropriate. These suggestions are intended to supplement current practice to afford maximum protection for the mobile home financier. Of course a financier's best protection is his credit policy. A solid lending practice minimizes defaults and the need for legal action.

The law has always maintained a conservative lag behind social and technical developments. Perhaps this is the time for the legislature to establish the proper relationship of the mobile home to the Code, if only to clarify its classification.

68. R.C.M. 1947, § 33-106. Note, general waivers of the homestead exemption are void. But where a person encumbers his homestead knowing the results of surrendering his homestead rights, he waives the exemption. *United States Bldg. etc. Assn. v. Stevens*, 93 Mont. 11, 17 P.2d 62, 65 (1932).

69. R.C.M. 1947, § 87A-9-314(1).