



## **Perfection and Priority of Security Interests in Fixtures Under the Indiana Uniform Commercial Code**

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The Indiana Uniform Commercial Code provides two primary methods for perfecting a security interest in “fixtures” (*i.e.*, “goods that have become so related to particular real property that an interest in them arises under real property law.” I.C. § 26-1-9.1-102(41)). The first is by filing a financing statement (Form UCC1) with the office of the Indiana Secretary of State in the same manner as one would to perfect a security interest in the goods as personal property. I.C. § 26-1-9.1-501(a)(2). The second is by recording a “fixture filing” (Forms UCC1 + UCC1Ad) in the recorder’s office of the county where the real property is located. I.C. § 26-1-9.1-501(a)(1)(B). Either method will perfect a security interest in the debtor’s fixtures. However, the priority of that interest as compared to a recorded lien against the real property varies depending on the circumstances.

Two general rules govern the priority between a fixture security interest and a properly recorded real estate lien. If the security interest was perfected by filing a financing statement with the Indiana Secretary of State, the security interest is subordinate to the lien against the real property regardless of the order in which the two interests were perfected. I.C. § 26-1-9.1-334(c). But if the security interest was perfected by a fixture filing recorded in the county recorder’s office, the first to file or record will typically have priority. I.C. § 26-1-9.1-334(e)(1). These rules, however, are subject to several notable exceptions.

**Purchase Money Collateral.** A purchase-money security interest in fixtures perfected by a fixture filing has priority over a prior recorded lien against the real property if the debtor has an interest of record in or is in possession of the realty and the purchase-money security interest is perfected before the goods become fixtures or within twenty days thereafter. I.C. § 26-1-9.1-334(d). However, this exception does not apply as against an earlier-perfected construction mortgage. I.C. § 26-1-9.1-334(h).

**Judgment Liens.** A security interest in fixtures, whether perfected by recording a fixture filing in the county recorder’s office or by filing a financing statement with the Indiana Secretary of State, has priority over a later-recorded real property

lien obtained by legal or equitable proceedings, such as a judgment lien. I.C. § 26-1-9.1-334(e)(3).

**Readily Removable Goods.** A security interest in fixtures that are (a) factory or office machines, (b) equipment that is not primarily used in the operation of the real property, or (c) replacements of certain domestic appliances has priority over a recorded lien against the real property if the fixture security interest is perfected by any method before the goods become fixtures. I.C. § 26-1-9.1-334(e)(2).

**Crops.** A perfected security interest in crops growing on real property has priority over a recorded lien against the real property, provided the debtor has an interest of record in or is in possession of the real estate. I.C. § 26-1-9.1-334(i).

As a practical matter, a creditor holding a security interest in goods that are or may become affixed to real property owned or possessed by the debtor, should strongly consider perfecting that interest by filing both a financing statement with the Indiana Secretary of State and recording a fixture filing in the county recorder's office. Judicial determinations of whether goods have become fixtures are highly fact sensitive and therefore unpredictable. By filing a financing statement, the creditor's security interest will be perfected in the event the goods are deemed to remain personal property. By recording a fixture filing, the creditor's security interest will be afforded the highest level of protection as against persons claiming an interest in the related real estate.

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