



Ohio Revised Code

Section 1310.37 Lessor's and lessee's rights when goods become fixtures - UCC 2A-309.

Effective: July 1, 2001

Legislation: Senate Bill 74 - 124th General Assembly

(A) As used in this section:

(1) Goods 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 in which a record of a mortgage on the real estate would be filed or recorded, of a financing statement covering goods that are or are to become fixtures and conforming to the requirements of divisions (A) and (B) of section 1309.502 of the Revised Code.

(3) A lease is a "purchase money lease" unless the lessee has possession or use of the goods or the right to possession or use of the goods before the lease agreement is enforceable.

(4) A mortgage is a "construction mortgage" to the extent it secures an obligation incurred for the construction of an improvement on land, including the acquisition cost of the land, if the recorded writing so indicates.

(5) "Encumbrance" includes real estate mortgages, other liens on real estate, and all other rights in real estate that are not ownership interests.

(B) Under sections 1310.01 to 1310.78 of the Revised Code, a lease may be of goods that are fixtures or may continue in goods that become fixtures, but, under those sections, no lease exists of ordinary building materials incorporated into an improvement on land.

(C) Sections 1310.01 to 1310.78 of the Revised Code do not prevent the creation of a lease of fixtures pursuant to real estate law.



(D) The perfected interest of a lessor of fixtures has priority over a conflicting interest of an encumbrancer or owner of the real estate if either of the following applies:

(1) The lease is a purchase money lease, the conflicting interest of the encumbrancer or owner arises before the goods become fixtures, the interest of the lessor is perfected by a fixture filing before the goods become fixtures or within ten days after they become fixtures, and the lessee has an interest of record in the real estate or is in possession of the real estate.

(2) The interest of the lessor is perfected by a fixture filing before the interest of the encumbrancer or owner is of record, the lessor's interest has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner, and the lessee has an interest of record in the real estate or is in possession of the real estate.

(E) The interest of a lessor of fixtures, whether or not perfected, has priority over the conflicting interest of an encumbrancer or owner of the real estate if any of the following applies:

(1) The fixtures are readily removable factory or office machines, readily removable equipment that is not primarily used or leased for use in the operation of the real estate, or readily removable replacements of domestic appliances that are goods subject to a consumer lease and, before the goods become fixtures, the lease contract is enforceable.

(2) The conflicting interest is a lien on the real estate obtained by legal or equitable proceedings after the lease contract is enforceable.

(3) The encumbrancer or owner has consented in writing to the lease or has disclaimed an interest in the goods as fixtures.

(4) The lessee has a right to remove the goods as against the encumbrancer or owner. If the lessee's right to remove terminates, the priority of the interest of the lessor continues for a reasonable time.

(F) Notwithstanding division (D)(1) of this section but otherwise subject to divisions (D) and (E) of this section, the interest of a lessor of fixtures, including the lessor's residual interest, is subordinate to the conflicting interest of an encumbrancer of the real estate under a construction mortgage



recorded before the goods become fixtures if the goods become fixtures before the completion of the construction. To the extent given to refinance a construction mortgage, the conflicting interest of an encumbrancer of the real estate under a mortgage has this priority to the same extent as the encumbrancer of the real estate under the construction mortgage.

(G) In cases not within divisions (A) to (F) of this section, priority between the interest of a lessor of fixtures, including the lessor's residual interest, and the conflicting interest of an encumbrancer or owner of the real estate who is not the lessee is determined by the priority rules governing conflicting interests in real estate.

(H) If the interest of a lessor of fixtures, including the lessor's residual interest, has priority over all conflicting interests of all owners and encumbrancers of the real estate, the lessor or the lessee, on default, expiration, termination, or cancellation of the lease agreement but subject to the lease agreement and sections 1310.01 to 1310.78 of the Revised Code, or if necessary to enforce other rights and remedies of the lessor or lessee under those sections, may remove the goods from the real estate, free and clear of all conflicting interests of all owners and encumbrancers of the real estate, but the lessor or lessee shall reimburse any encumbrancer or owner of the real estate who is not the lessee and who has not otherwise agreed for the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the party seeking removal gives adequate security for the performance of this obligation.

(I) Even though the lease agreement does not create a security interest, the interest of a lessor of fixtures, including the lessor's residual interest, is perfected by filing a financing statement as a fixture filing for leased goods that are or are to become fixtures in accordance with the relevant provisions of Chapter 1309. of the Revised Code.