

UCC SECURITY INTERESTS IN REAL ESTATE FINANCINGS

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INTRODUCTION—UCC COLLATERAL IN DEEDS OF TRUST

- Fixtures.
- Certain types of personal property (*e.g.*, equipment, general intangibles, and accounts).
- As-extracted collateral (in oil and gas financings).
- UCC of relevant state governs creation and perfection of security interests in personal property.
- Failure to properly perfect and maintain a security interest can have disastrous consequences, as discussed in the next slide.

CAUTIONARY TALE: BE CAREFUL

- GM had entered into two separate financing transactions—a synthetic lease of \$300 million and a term loan of \$1.5 billion.
- When the synthetic lease was terminated, a paralegal at GM's law firm prepared UCC termination statements that terminated the financing statements relating to both the synthetic lease and the term loan, although the term loan financing statement was supposed to remain in place.
- No one caught the error and when GM filed for bankruptcy, the court held that the termination of the term loan financing statement was effective to release the collateral.

CREATION OF SECURITY INTERESTS

- Creditor must give value.
- Debtor must sign a security agreement that provides a description of the collateral.
- Description of collateral as “all assets” or “all personal property” is insufficient; UCC categories are therefore typically used.
- Deed of Trust should preferably contain language expressly granting a security interest in the UCC collateral; some Deeds of Trust contain separate sections granting a security interest in the UCC collateral.

WHERE TO FILE—CENTRAL FILING COLLATERAL

- Central Filing Collateral includes accounts, equipment, general intangibles and inventory.
- For registered organizations (corporations, limited partnerships and limited liability companies), file UCC-1 financing statement in jurisdiction of organization.
- For U.S. non-registered organizations (e.g., general partnerships), file in jurisdiction in which debtor has its place of business or, if the debtor has more than one place of business, in jurisdiction where chief executive office is located.

WHERE TO FILE—CENTRAL FILING COLLATERAL

- For U.S. natural persons (*i.e.*, individuals), file in jurisdiction in which principal residence is located.
- For non-U.S. individuals and entities with no offices or operations in the U.S., file in foreign jurisdiction in which debtor has its place of business, chief executive office or residence if that jurisdiction has a public filing system for perfection. If that jurisdiction has no such public filing system, then a financing statement should be filed in the Office of the Recorder of Deeds of the District of Columbia. You may want to make a precautionary filing in D.C. in any event.

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