

# A Wisconsin Mortgage May Serve as a Fixture Filing Financing Statement

When we are serving as local real estate counsel in commercial transactions involving Wisconsin real property, we are frequently asked by counsel from other states whether a separate UCC fixture financing statement needs to be filed in the local register of deeds office to properly perfect a creditor's interest in fixtures. We are pleased to answer that in Wisconsin no separate UCC fixture financing statement is needed so long as the mortgage is properly drafted to also serve as a fixture filing.

To serve as an effective fixture filing financing statement pursuant to section 409.502(3) of the Wisconsin Statutes, a mortgage must (1) clearly describe the goods described in the mortgage that are (or are to become) fixtures; (2) satisfy all of the requirements for a financing statement other than providing an indication that it is to be filed in the real property records; and (3) be duly recorded. A mortgage will satisfy the standard financing statement requirements if it clearly:

1. sets forth the names of the debtor and secured party;
2. describes the collateral to be covered;
3. states that it covers fixtures;
4. provides a legal description of the real property to which the collateral is related sufficient to give constructive notice of a mortgage under the law of this state if the description were contained in a record of the mortgage of the real property; and
5. provides the name of the record owner of the real property if the debtor does not have an interest of record in the real property.

Finally, the mortgage itself must be properly executed and placed of record in the register of deeds office in the Wisconsin county in which the applicable real property is located.

When we are asked to provide an opinion that a mortgage serves as a valid fixture filing financing statement, these statutory requirements are, in turn, reflected in the standard assumptions upon which our opinion is based; *i.e.*, the Reinhart

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opinion assumes that (1) valid and sufficient legal descriptions of the relevant real property are included in the mortgage prepared for filing with applicable register of deeds office, (2) that the mortgage contains the proper name and address of the borrower, an address of the lender from which information concerning the security interests granted in the mortgage may be obtained, and, as applicable, (3) the correct name of the record owner of the real property.

If you have any questions or concerns about the information that needs to be included in a mortgage to have it serve as a fixture filing, please do not hesitate to contact your Reinhart attorney or any member of our Real Estate Opinion team.

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