

Priority

General

First in time, first in right. If no creditor has perfected, priority goes to the first to attach. A security interest in collateral continues notwithstanding its sale unless an exception applies.

Perfection prevails over attachment (in terms of date)

Competing Perfected Security Interests

1. First in time, first in right (first to file or perfect wins)

2. PMSI

a. In non-inventory goods perfects on attachment for 20 days then have to file a financing statement. For consumer goods, PMSI is perfected on attachment and not subject to the 20-day rule

b. PMSI inventory vs. non-PMSI – PMSI holder will prevail over non-PMSI holder if they notify the prior perfected non-PMSI creditor

Special PMSI Rules

- 1) PMSI gets priority over all other non-PMSI security interests
- 2) A PMSI in goods other than inventory and livestock and consumer goods prevails over all other security interests in the collateral even if they were previously perfected
 - a) A PMSI in consumer goods is perfected upon attachment and not subject to the 20-day grace period to file; however, failure to file will not protect the creditor in a consumer-to-consumer transaction for consumer goods. All other goods automatically perfect upon attachment subject to a 20-day grace period to file. If the secured party files within 20 days, it will relate back to the date of attachment. If not, the secured party will still have a perfected security interest with a priority date of the date of filing.

Then.....

d. Judgment Creditor

- 1) Perfects on the date the judgment was registered

e. Bankruptcy Trustee

- 1) Becomes perfected as of the date the petition is filed in federal court
- 2) Priority attaches to any collateral where valid perfection was not previously accomplished

f. General Unsecured Creditors

- 1) Last people to have their debts paid off
- 2) Security agreements have to be in writing, so if there's an oral agreement, falls into this category

Exceptions to Priority

1) Retail Inventory

a) Retail inventory subject to a security interest which are sold to a buyer in the ordinary course of business will be taken free and clear of any security interest created by the seller

b) Buyer in the ordinary course of business

(1) To be a buyer in the ordinary course of business, must purchase the inventory from a person who regularly sells goods of that kind

(2) The category of the collateral in the buyer's hands does not matter

(3) Take free and clear, so long as no actual knowledge of security interest

(4) With respect to farm products, the purchase has to be from someone other than the farmer. so it would be bought at a market, etc.

More Exceptions

2) Laborer's Liens/Material's Liens

- a) The person who makes the property become more valuable has priority in the value of their work over any prior security interest
- b) A person entitled to a lien usually has to file a formal lien notice within 90 days of the last day of work otherwise the lien will be extinguished
- c) A lien is superior to any interest which attached prior to it but was not perfected and is also superior to all subsequent interests; however, to override a prior perfected interest there has to be a statute that authorizes it.

3) Warehouse and Carrier Liens

- a) A warehouse or carrier has a lien for storage and transportation of the collateral they possess. The lien is lost if the lienholder redelivers the collateral to the owner.

Even More Exceptions

4) Bankruptcy

a) When a bankruptcy petition is filed, the court appoints a trustee to represent unsecured creditors

b) Bankruptcy court has the power to set aside bargain sales of assets or security interests given in payment for antecedent debts on the eve of bankruptcy

(1) An asset bargain sale is a transfer of assets for less than full and fair consideration (market value). Will usually constitute an unauthorized sale or conversion

(2) Preferential Security Interests

(a) A debtor granting a security interest on an antecedent debt may have that security interest set aside unless the current transaction was the purchase for new collateral

(3) 90-Day Rule

(a) Asset bargain sales or preferential security interests will generally be set aside if they occur within 90 days immediately preceding the bankruptcy petition

(b) A one-year extension

i. If the transferee was an insider, related party, or if the transfer was fraudulent, the 90-day window can be extended to one year.