

# Priorities

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When two or more parties have security interests in the same collateral, it is necessary to determine who has priority

There is a general rule regarding priority

- The general rule states that perfection of the security interest is most important in determining priority
- Whoever perfects first has first priority

A perfected secured party's interest has priority over the following parties

- an unsecured creditor
- an unperfected secured creditor
- a subsequent lien creditor
- a trustee in bankruptcy
- buyers who do not purchase in the ordinary course of business

Conflicts among creditors

- Sometimes conflicts exist among creditors
- When secured creditors are in conflict, the first in time rule usually applies

Conflicting Perfected Security Interests

- When two or more secured parties have perfected security interests in the same collateral,
  - generally the first to perfect (or to file and subsequently perfect) has priority
- A PMSI, however, prevails over a prior-perfected non-PMSI in the same collateral

Perfected vs. Unperfected Security Interests

- When two or more secured parties have perfected security interests in the same collateral,
  - generally the first to perfect (or to file and subsequently perfect) has priority

Conflicting Unperfected Security Interests

- When two or more secured parties have unperfected security interests in the same collateral, generally the first to attach has priority

Secured vs. Unsecured Creditor

- Secured creditors prevail against unsecured creditors and judgment creditors who have not begun legal process to collect on their judgment

Secured Party vs. Lienholder

- A perfected security interest prevails against a lienholder's claim that arose after perfection

## Conflicts can arise between subsequent buyers of the collateral and creditors

The applicable rule to solve the conflict depends on the status of the buyer

- Conflicts can exist between creditors and subsequent buyers of the collateral
- Sometimes a buyer will purchase goods that are subject to a security interest

### Buyer in the Ordinary Course of Business

- A person who buys goods in good faith and without knowledge that the sale is in violation of a third party's ownership rights or security interest
- from a person who is in the business of selling goods of the kind
- will take the goods free of any security interest

The buyer in the ordinary course of business has priority over a secured creditor even if

- the security interest is perfected, and
- the buyer knows of its existence

### Buyer Not in the Ordinary Course

- A person who buys goods other than in the ordinary course of the seller's business will take the goods free of any unperfected security interest, but subject to any perfected one

### Second-Hand Buyer of Consumer Goods

- A person who, purchases goods for personal, family, or household use, without knowledge of a prior security interest, from a seller who held the goods for personal, family, or household use, takes free of any unfiled security interest

## Conclusion

What did we learn today?

- Every security interest has a scope of coverage
- When two or more parties have security interests in the same collateral, it is necessary to determine who has priority
- The UCC contains rules of priority