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Perfecting Security Interests in Motor Vehicles in Oklahoma: If at First You Don't Succeed, Try Try Again



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In 1961 the Oklahoma Legislature enacted the Uniform Commercial Code for Oklahoma which became effective January 1, 1963. Through Okla. Stat. Ann. tit. 12A, § 9-302(1), a security interest in a motor vehicle could be perfected in one of two ways, by filing a financing statement (the general rule) or by the secured party taking possession of the collateral (9-302(1)(a) and 9-305).

In 1977, the Oklahoma Legislature enacted Senate Bill 350 (Act of June 14, 1977, ch. 223, 1977 Okla. Sess. Laws 556), which revised Okla. Stat. Ann. tit. 12A, § 9-302 and tit. 47, § 23.3 and provided that perfection of a security interest would occur through *the issuance* of a certificate of title showing the security interest and name and address of the secured party upon the certificate of title. The time of notation of a lien was deemed to be the time of perfection of the security interest.

Although S.B. 350 was approved on June 14, 1977, and was not to become effective until July 1, 1978, a year later, it appears that the Oklahoma Tax Commission was unable to implement the necessary recording system and the Oklahoma Legislature, prior to the effective date of S.B. 350, again revised Okla. Stat. Ann. tit. 12A, § 9-302, and tit. 47, § 23.3. Under this legislation, Senate Bill 550 (Act of April 4, 1978, ch. 135, 1978 Okla. Sess. Laws 243), perfection occurred *when delivery was made* to the Oklahoma Tax Commission or one of its motor license agents of the existing certificate of title, if any, an application for a certificate of title containing the name and address of the secured party and the date of the security agreement and the required fee.

S.B. 550 also amended the effective date for S.B. 350 from July 1, 1978 to June 30, 1979. The effective date for S.B. 550, however, was July 1, 1979.

The 1977 statute originally was to become effective on July 1, 1978. If the 1978 statute were effective immediately upon enactment, it would have delayed any change in the method of perfection as to motor vehicles until June 30, 1979 (a delay of one year). Not only would the change in method be delayed by a year, but the method of perfection would be that appearing in the 1978 statute rather than in the 1977 statute.

But the effective date of the 1978 statute was July 1, 1979, and therefore the amendments to the 1977 statute could not go into effect until July 1, 1979. Thus the attempt to change the effective date of the 1977 statute from July 1, 1978 to June 30, 1979, was ineffective since the section of the 1978

statute that changed the effective date of the 1977 statute was not effective until July 1, 1979, or a year after the 1977 statute became effective.

Considering just the 1977 and 1978 statutes, the end result would have been from January 1, 1963 until July 1, 1978, the method of perfecting a security interest in a motor vehicle was with a properly filed financing statement. Between July 1, 1978, and July 1, 1979, the method of perfecting was as provided in the 1977 statute ("When the Commission or one of its motor license agents *has issued a certificate of title* showing the security interest and name and address of the secured party upon the certificate of title"). From July 1, 1979 on, the method of perfecting was provided in the 1978 statute ("*when delivery is made to the Commission* or one of its motor license agents of the existing certificate of title, if any, and application for a certificate of title containing the name and address of the secured party and the date of the security agreement and the required fee").

The Attorney General for Oklahoma would disagree with this reading of S.B. 550. In his June 30, 1978 opinion, he denied the statute its literal interpretation. He read the effective date of S.B. 550 (Section 4) as only being the effective date for sections 1 and 2. Section 3, which delayed the effective date of S.B. 350 (the 1977 statute), was to be implemented as soon as possible. (Okla. Att'y Gen. Op. No. 78-218 (June 30, 1978)). Under the Attorney General's reading of the 1978 statute, Oklahoma Constitution art. 5, § 58, comes into play:

No act shall take effect until ninety (90) days after the adjournment of the session at which it was passed . . . unless, in case of emergency, to be expressed in the act, the legislature . . . directs

S.B. 550 (the 1978 statute) did not include an emergency clause so the 90

day rule would apply. Since the second regular session of the Thirty-Sixth Legislature (the session at which S.B. 550 was passed) adjourned on April 28, 1978, ninety days from that date would be July 27, 1978. The net result under this approach is from January 1, 1963 until July 1, 1978, the method of perfecting a security interest in a motor vehicle was with a properly filed financing statement. Between July 1, 1978, and July 27, 1978 (a 27 day period), the method of perfecting was as provided in the 1977 statute. From July 27 until July 1, 1979, the method of perfection reverted back to pre July 1, 1978 method, filing a financing statement. Then from July 1, 1979, the method of perfecting was as provided in the 1978 statute.

If life were not difficult enough, the Legislature passed three more pieces of legislation dealing with this problem. The first was House Bill 1227, approved as emergency legislation (Act of May 17, 1979, ch. 181, 1979 Okla. Sess. Laws 460). H.B. 1227 amended Okla. Stat. Ann. tit. 47 to provide that a security interest in a motor vehicle would be perfected when a lien entry form prescribed by the Commission and the existing certificate of title, if any, or application for a certificate of title and manufacturer's certificate of origin containing the name and address of the security party and the date of the security agreement and the required fee were delivered to the Oklahoma Tax Commission or one of its motor license agents.

H.B. 1227 expressly repealed the sections of the 1977 and 1978 statutes which dealt with Okla. Stat. Ann. tit. 47. The effective date of H.B. 1227 was July 1, 1979. Since this date is the same as the effective date for the 1978 statute, the section of the 1978 statute that dealt with title 47 never became effective. Thus the method for perfection as of July 1, 1979, should have changed from that found in the 1977 statute to that found in H.B. 1227.

In less than 2 months, the Legislature approved yet another statute, H.B. 1405 (Act of July 5, 1979, ch. 292, 1979 Okla. Sess. Laws 886). It did not substantially change the portion of title 47 deadline with the method of perfection of security interests in motor vehicles; it described those vehicles excluded from the current method of perfection.

Finally, the Legislature passed H.B. 1974 which became effective July

1, 1980 (Act of June 25, 1980, ch. 341, 1980 Okla. Sess. Laws 985). The perfection requirements of title 47, § 23.2b were left intact; change occurred only with regard to the use of a messenger by the debtor to procure the motor vehicle license. (H.B. 1042 is currently before the 38th Legislature to amend H.B. 1794.)

Perfecting a security interest in a motor vehicle today occurs when a lien entry form, the existing certificate of title, and the required fee are delivered to the Oklahoma Tax Commission or one of its motor license agents. But the more interesting question is what is the current status of security interests sought to be perfected between July 1, 1978, and July 1, 1979. If they are unperfected, then they are subordinate to the debtor's trustee in bankruptcy under 9-301(1)(b), subordinate to other lien creditors, and subordinate to subsequent perfected secured parties under 9-301(1)(a). So the problem has not gone away and may take a substantial period (the length of most standard purchase money security interests) to run its course.

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