

## **Opinion No. 62-02**

January 3, 1962

**BY:** OPINION OF EARL E. HARTLEY, Attorney General Thomas A. Donnelly, Assistant Attorney General

**TO:** William H. Darden, Assistant District Attorney, Eighth Judicial District, Raton, New Mexico

### **QUESTION**

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1. Does the Uniform Commercial Code require the use of any certain form of financing statement, or is any financing statement that complies with the provision of Section 50A-9-402, N.M.S.A., 1953 Compilation, sufficient?
2. What fee should the clerk charge in satisfying a chattel mortgage recorded prior to the effective date of the Uniform Commercial Code? Should the clerk charge the fee presently provided, or the new fee for satisfying similar instruments?

#### **CONCLUSIONS**

1. No specific form is required for a financing statement filed under the Uniform Commercial Code.
2. The correct fee to be charged by a clerk for satisfying a chattel mortgage recorded prior to the effective date of the Uniform Commercial Code is \$ 0.25.

### **OPINION**

Under Section 50A-9-402, N.M.S.A., 1953 Compilation, the formal requisites for a financing statement required to be filed under the provisions of the Uniform Commercial Code, in order to perfect a security interest in personal property or fixtures, are enumerated. This Section provides in part as follows:

"(1) A financing statement is sufficient if it is signed by the debtor and the secured party, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address of the debtor and contains a statement indicating the types, or describing the items, of collateral. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches. When the financing statement covers crops growing or to be grown or goods which are or are to become fixtures, the statement must also contain a description of the real estate concerned. A copy of the security agreement is sufficient

as a financing statement if it contains the above information **and is signed by both parties.**

(3) A form substantially as follows is sufficient to comply with subsection (1):

Name of debtor (or assignee) \_\_\_\_

Address \_\_\_\_

Name of secured party

(or assignor) \_\_\_\_

Address \_\_\_\_

1. This financing statement covers the following types (or items) of property:

(Described) \_\_\_\_

2. (If collateral is crops)

The above described crops are growing or are to be grown on:

(Describe Real Estate) \_\_\_\_

3. (If collateral is goods which are or are to become fixtures) The above described goods are affixed or to be affixed to:

(Describe Real Estate) \_\_\_\_

4. (If proceeds or products of collateral are claimed) Proceeds-Products of the collateral are also covered.

Signature of Debtor

(or Assignor) \_\_\_\_

Signature of Secured

Party (or Assignee) \_\_\_\_

5. A financing statement substantially complying with the requirements of this section is effective even though it contains minor errors are not seriously misleading."

As stated in the comments of the drafters of the Uniform Commercial Code under Section 9-402 the requirements for a financing statement are intended to be nonformal and simple in nature.

The comments provide in part as follows:

"1. Subsection (1) sets out the simple formal requisites of a financing statement under this Article. These requirements are: (1) signatures and addresses of both parties; (2) a description of the collateral by type or item. Where the collateral is growing crops or fixtures, the financing statement must also contain a description of the land concerned. Section 9-110 provides that "any description of personal property or real estate is sufficient whether or not it is specific if it reasonably identifies what is described". Subsection (3) suggests a form which complies with the statutory requirements. A copy of the security agreement may be filed in place of a separate financing statement, if it is signed by both parties and contains the required information."

As set forth under the provisions of Section 50A-9-402, N.M.S.A., supra, subsection (5), a financing statement substantially complying with the requirements of this section is effective even though it contains minor errors which are not seriously misleading. As stated above, a copy of the security instrument itself may be filed in place of a separate financing statement, if it is signed by both parties and contains the required information. It is thus, not required that the instrument be necessarily labeled as a financing agreement in order to comply with the requisites of a financing statement. Any instrument with or without a label such as, but not limited to, chattel mortgages, conditional sales contracts, security agreement, etc., may be accepted as a financing statement if it contains the name and address of the lender and the borrower or assignor and assignee, and if it contains a description of the items of collateral. If the instrument filed substantially complies with the provisions of Section 50A - 9 - 402, N.M.S.A., 1953 Compilation, such is sufficient to constitute a financing statement within the purview of the act.

In your second question stated above, you inquire what fee a county clerk should charge in satisfying a chattel mortgage recorded prior to the effective date of the Uniform Commercial Code.

The correct fee which should be charged in such instance is the sum of \$ 0.25, as provided in Section 61-8-6, N.M.S.A., 1953 Compilation. This section sets out in part:

"The County Clerk shall collect, in advance, for the filing and entry of a chattel mortgage, the sum of fifty cents (\$ .50), and for the filing and entry of an assignment of a chattel mortgage by separate instrument or of an affidavit in lieu of an assignment, the sum of twenty-five cents (\$ .25). For the filing and entry of a certificate of satisfaction of a chattel mortgage or conditional sales contracts, the County Clerk shall collect the sum of twenty-five cents (\$ .25) . . ."

Section 61-8-7, N.M.S.A., 1953 Compilation, requires that "When the amount secured by any chattel mortgage so filed is fully paid it shall be the duty of the mortgagee, or his assignee to execute and deliver to the mortgagor or his successor in interest a certificate of satisfaction thereof duly executed and acknowledged."

Both, Sections 61-8-6 and 61-8-7, N.M.S.A., 1953 Compilation, were expressly repealed by Section 10-102 of Chapter 96, Laws of 1961 (Uniform Commercial Code), however, it is expressly provided in subsection (2) of Section 10-102, Chapter 96, Laws of 1961, that:

"(2) Transactions validly entered into before the effective date specified in section 10-101 (50A-10-101) and the rights, duties and interests flowing from them remain valid thereafter and may be terminated, completed, consummated or enforced as required or permitted by any statute or other law amended or repealed by this act as though such repeal or amendment had not occurred."

Thus, under the above provision the mortgagee, or his assignee, is required to issue a certificate of satisfaction of such indebtedness whenever the amount secured by the chattel mortgage is fully paid, and where the chattel mortgage was filed prior to the effective date of the Uniform Commercial Code. Under the language of Section 10-102, Chapter 96, Laws of 1961, it is clear that the proper filing fee chargeable for the filing and entry of a satisfaction of indebtedness for chattel mortgages which were filed prior to the effective date of the Uniform Commercial Code, and which satisfaction of indebtedness occurs subsequent to the operation of the act, would be twenty-five cents (0.25).