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ATTORNEYS AT LAW

Secured Lending Issue: “As-Extracted Collateral” and Mortgage As Financing Statement

“As-Extracted Collateral”.

Oil and gas lenders often take a security interest in “as–extracted collateral”. “As-extracted collateral” is the extracted minerals and the accounts arising out of the sale of minerals at the well head or mine head. To obtain the security interest in as-extracted minerals, the debtor must have an interest in the minerals before extraction. K.S.A. § 84-9-102(6).

Financing Statement.

A financing statement is filed to perfect a security interest in “as-extracted collateral” because the collateral is in the nature of personal property. The financing statement is filed in the office where real estate records are filed. Because the lender has a mortgage lien on the minerals before extraction, the mortgage doubles as a financing statement covering the “as-extracted collateral”. K.S.A. § 84-9-502(c).

Continuation Statement Issues.

An issue under Kansas law is whether the “financing statement” in the form of a mortgage must be continued after five (5) years. A financing statement must be continued before the 5th anniversary of its filing.

The Kansas Statutes provide relief from the filing of continuation statements in the case of a mortgage serving as a financing statement for fixtures. K.S.A. § 84-9-515(g) provides that if a record of mortgage is effective as a financing statement filed for fixtures, then the “financing statement” for the fixtures remains effective until the mortgage is released or satisfied of record. A continuation statement is not required.

Unfortunately, K.S.A. § 84-9-515(g) does not expressly provide a similar continuation provision for a mortgage filed as a financing statement for “as-extracted collateral”. As a result, it is ambiguous in Kansas as to whether a continuation statement for a financing statement for “as-extracted collateral” must be filed before the fifth anniversary date of the recording for the mortgage.

Filing UCC-1 Form.

Lenders should consider filing a UCC-1 financing statement form for “as-extracted collateral” when the mortgage is recorded. A continuation statement would be filed as with any other financing statement for personal property to avoid the potential loss of perfected status.

Disclaimer.

The foregoing does not constitute legal advice. Please contact Ken Dannenberg or Zach Wiggins for advice regarding your secured lending matters.