

## **CHAPTER 47-35 SECURITY INTEREST IN RENTS**

### **47-35-01. Security interest in rents.**

1. A document, however denominated, that is enforceable and creates or provides for a security interest in real property, whether or not it also creates or provides for a security interest in personal property, creates an assignment of rents arising from the real property described in the document, unless the document provides otherwise.
2. An assignment of rents creates a presently effective security interest in all accrued and unaccrued rents arising from the real property described in the document creating the assignment, whether the document is denominated an absolute assignment, an absolute assignment condition upon default, an assignment as additional security, or otherwise. The security interest in rents is separate and distinct from any security interest held by the assignee in the real property.

### **47-35-02. Cash proceeds - Priority.**

1. An assignee's security interest in identifiable cash proceeds is perfected if its security interest in rents is perfected. An assignee's security interest in identifiable noncash proceeds is perfected only if the assignee perfects that interest in accordance with chapter 41-09.
2. Except as otherwise provided in subsection 3, priority between an assignee's security interest in identifiable proceeds and a conflicting interest is governed by the priority rules in chapter 41-09.
3. An assignee's perfected security interest in identifiable cash proceeds is subordinate to a conflicting interest that is perfected by control under chapter 41-09 but has priority over a conflicting interest that is perfected other than by control.

### **47-35-03. Perfection of security interest in rents.**

1. A document creating an assignment of rents may be submitted for recording in the office of the recorder for the county in which the real property described in the document is located in the same manner as any other document evidencing a conveyance of an interest in real property.
2. Upon recording, the security interest in rents created by an assignment of rents is fully perfected, notwithstanding any provision of the document creating the assignment or other law of this state which would preclude or defer enforcement of the security interest until the occurrence of a subsequent event, including a subsequent default of the assignor, the assignee's obtaining possession of the real property, or the appointment of a receiver.
3. Except as otherwise provided in subsection 4, a perfected security interest in rents takes priority over the rights of a person who, after the security interest is perfected, acquires an interest in or judgment lien against the rents or the real property from which they arise.
4. A perfected security interest in rents has priority over the rights of a person listed in subsection 3 with respect to future advances to the same extent as the assignee's security interest in the real property has priority over the rights of that person with respect to future advances.

### **47-35-04. Enforcement of security interest in rents.**

1. An assignee may enforce an assignment of rents using any method sufficient to enforce the assignment under law of this state, including notice to the assignor, notice to the tenant, and the appointment of a receiver.
2. From the date of enforcement, the assignee or, in the case of enforcement by appointment of a receiver, the receiver is entitled to collect all rents that have accrued but remain unpaid on that date and accrue on or after that date, as those rents accrue.

**47-35-05. Application to existing relationships.**

1. Except as otherwise provided in this section, this chapter governs the enforcement of an assignment of rents and the perfection and priority of a security interest in rents, even if the document creating the assignment was signed and delivered before August 1, 2013.
2. This chapter does not affect an action or proceeding commenced before August 1, 2013.
3. This chapter does not affect:
  - a. The enforceability of an assignee's security interest in rents or proceeds if immediately before August 1, 2013, that security interest was enforceable;
  - b. The perfection of an assignee's security interest in rents or proceeds if immediately before August 1, 2013, that security interest was perfected; or
  - c. The priority of an assignee's security interest in rents or proceeds with respect to the interest of another person if immediately before August 1, 2013, the interest of the other person was enforceable and perfected, and that priority was established.