

**IACA Resolution 4**  
**Presentation of Suggested Revised Article 9 Statutory/Comment**  
**Changes to NCCUSL (National Conference of Commissioners on**  
**Uniform State Laws)**  
**May 3, 2005**

1. Clarification in 9-518 to allow for the use of a Correction Statement to address the need for not only Debtor use, in the instance of an inaccurate or wrongfully filed Financing Statement being indexed there under the person's name, currently allowed in 9-518(a), but also, the need of the Secured Party to be able to place a notice in the record when an data entry error occurs by an unauthorized Party which appears to amend an already existing Initial Financing Statement, (e.g. Termination is recorded against the "wrong" Financing Statement due to a data entry or typographical error in the identifying file number).
  - This can be done by changing 9-518(b) to (c) and (c) to (d), and create a new 9-518(b) that would clearly allow for the use of this form by the Secured Party.
  - Rename the document currently described in statute as a "Correction Statement", to "Inaccurately or Wrongfully Filed Record Statement".
  - Add a comment to 9-518 that clarifies exactly how and when Secured Parties could use this document to put future interested parties on notice.
  
2. Clarification regarding lapse dates when continuations submitted in the 6 months prior to the July 1, 2001 date set the new lapse date beyond what many know to be the 9-705(c) cutoff date. This situation has two issues that need to be considered:
  - Unwary Secured Parties may not realize that the lapse date reflected on their acknowledgment, and in the applicable UCC Division Record, is not the true lapse date as spelled out in 9-705(c) with the words "the earlier of". It is questionable if there is time to truly educate these Secured Parties without clear language in statute, via a new comment, that explains the issue and the resolution.
  - Filing Offices indexing systems automatically create a 6-month continuation window and the system will not allow a continuation to be filed outside of that window. For Secured Parties who had their pre-effective Financing Statement filed in the proper RA9 location, it means that their ability to file a timely continuation has been diminished by a shortened continuation window. It is suggested that NCUSL follow the lead taken by the States of MD and OK, and ask the other States to create a window that opens 1/1/06 and closes 6/30/06, to handle these continuation issues.

3. Is there any way that NCCUSL can clarify in the statute or otherwise to local filing officers in each state that signatures are not required on fixture filings under RA9?
  - It is agreed that statute is already clear that signatures are no longer required for UCC filings, both personal and real property related. The issue is one of educating local Filing Officers that UCC fixture filings are different from the other real property documents they file, and that a separate statute governs their effectiveness and acceptance. NCCUSL could possibly add to Comment 3 in 9-502, specific language directed at local level Filing Offices concerning Fixture Filings.
  - It has been suggested that possibly this is an issue that could also be addressed by the American Bar Association and their individual State level Bar Associations. If the ABA appointed a representative for each State to speak at the State Recorder's meetings, and educate these Recorders on RA9, plus work with the State Attorney General who could reinforce this education with a memo to each Recorder in their State, the message would get to the right people.
  
4. In Section 9-512(a)(2), there is a requirement that all types of Fixture Filing Amendments must include the real property description required by 9-502(b). This appears to Secured Parties to be burdensome and unnecessary, as the requirement has already been satisfied with the Initial Financing Statement and often requires users to get a copy of the Initial Financing Statement for this information. Particularly an issue when a new Secured Party is filing an assignment after purchasing the transaction from another Secured Party, they do not have the documentation in their portfolio. This was put into statute because many Recorders' do not file by Debtor Name or File Number, but by legal description for the Initial Financing Statement (document) and/or Secured Party (Lender) Name for Amendments (assignments in particular), making it extremely difficult to locate. It was thought that if the legal description were provided, the Recorder's would at least link all Amendments to the Initial Financing Statement, providing a searcher with a full picture of the transaction. This has worked in most cases, but in some the legal description is ignored and Amendments are filed under the name of the Secured Party (e.g. Dallas County, Texas). If the ABA could address this at the same time they address the signature issue, we would cure the Dallas County issue but probably never be able to eliminate the need for the legal description on Fixture Filing Amendments.

## 5. Defining Term “Public Record”

In 9-503(a)(1), the Statute states, “if the debtor is a registered organization, only if the financing statement provides the name of the debtor indicated on the “public record” of the debtor’s jurisdiction of organization which shows the debtor to have been organized”, the problem is that statute does not define the public record---is it the Articles of Incorporation and all Amendments and Formation documents to those Articles OR is it the State Entity (Corporation Division) database OR is it both?

- On the positive side of using the State Entity database, most of these State databases are easily accessible by all parties via the Internet, so it would be less costly and burdensome to filers. If hard copy documents were required or desired, the document ordered from the State would be the Certificate of Good Standing, as that created from the database, as opposed to the Articles of Incorporation and all amendments and supplemental formation documents to those Articles. An additional issue is the noise word list that is part of the “standard search logic” contained in the Model Administrative Rules of IACA that is used as a guide by most States when programming. It has been discovered that this noise word list is causing many search logic issues that create hidden liens no matter how it is addressed. If the State Entity database were used, the noise word list could be eliminated and searchers, like filers, would need to search the exact name as found on the State Entity database, endings and all.
- On the negative side, the problem with State Entity databases is that people make data entry errors that cause the name to be different from that on the Articles, etc. Some of these errors are just simple data entry mistakes and/or abbreviations made by entry operators, others are because a decision was made to do something a certain way (e.g. One (1) State all of the time and eight (8) States some of the time, will enter an entity name, that contains an individual name, with last name first, “John Hancock Insurance Corporation” would be indexed “Hancock, John, Insurance Corporation”). This currently causes confusion as to which name to file the financing statement under.

A case on point to this issue was settled out of Court in New Hampshire, but shows what happens in the “real world”. Debtor Name on the Articles of Incorporation was “John Wrobeleski Implement Company, Inc.”, Name on the New Hampshire Entity database was “Wrobeleski, John, Implement Company, Inc.”. The Secured Party made a business decision not to incur the additional expense of ordering Articles and Amendments, instead they went to the online database and filed under “Wrobeleski, John, etc.”. A year later, the Bankruptcy Trustee made it clear that the “correct debtor name” was the name on the Articles. The Secured Party was going to argue that 9-502 did not define the “public record”, but they settled out of Court instead, so no case law.

- Articles and all subsequent documents to them are a reflection of the exact legal name as contemplated by the signors of the documents. It is more costly and time consuming to obtain these documents.

The lack of a definition of the “public record” has yet to be addressed by a Court, but in the Spearing Tool Case it has been suggested in an Amicus Brief that the IRS can just call the State or go on its website to find the “correct debtor name” on the Corporation database. This is a BIG concern, as we know that even though this is a public record, it can and does differ with the formation documents that are what have been accepted and filed in the public record. If statute does not define the “public record”, users and Courts will have no clear direction on this issue, which will force users to file and search on both the name as found on the Articles and the name as found on the State Corporation database.

## 6. Defining “Legal Name”

- Determining the legal name, for individuals primarily, but in some instances for trusts and non-registered entities, is another area in 9-503 that is of great concern to users. Is there any way statute could clarify this, possibly in the comment area, so filers and searchers alike can actually be comfortable that they are filing and searching under the “correct debtor name”?
- The other option would be for a comment to indicate that for individuals, the user may well consider filing and searching under multiple variations of the name.