

Secured Transaction Section (STS) Report

2005 IACA Conference

May 25, 2005

Robert Lindsey
STS Chair

Agenda Items:

Resolution 1:

1. IACA's Secured Transaction Section resolves to form a committee to report back to the 2005 IACA Conference with recommendations on the following issues:
 - a. Non-standard search logic;
 - b. Standard search logic;
 - c. Filing/indexing rules related to but not limited to special characters, punctuations and accents.

We accomplished a great deal regarding this resolution but still have a lot of work to do.

The committee agreed on the following:

That jurisdictions should provide a Standard and Non-Standard Search Logic now and after June 30, 2006. After June 30, 2006 we strongly recommend that the Non-Standard Search logic only be available via the Web and used as a tool to aid searchers. The Non-Standard Search Logic should not be used by the filing office and filing offices should not certify the results of a search using Non-Standard Search Logic.

Filing offices that embrace/implement Standard Search Logic as well as provide the use of Non-Standard Search Logic via the Web are encouraged to use disclaimers. The Resolution 1 committee drafted the following two disclaimers for this very purpose:

- **Filing Office Standard Search Logic**
- [This search was performed using the filing office's standard search logic.]
- **A search under the correct name of the debtor using standard search logic includes all financing statements that may be effective under Revised Article 9 with certain exceptions.** Standard search logic may not reflect certain financing statements filed under prior law and other liens which may be effective but specify a variation of the debtor's name. Use of different search criteria (e.g., searching under variations of the debtor name) and/or use of filing office non-standard search logic, if available, may be utilized to discover financing statements that specify the incorrect name of the debtor filed before [Insert Effective Date of RA9] that may be effective until [Insert Transition End Date] when transition to Revised Article 9 in this state is complete. Use of different search criteria (e.g., searching under variations of the debtor name) and/or use of filing office non-standard search logic, if available, may be utilized to discover [Insert other liens such as Federal Liens, etc.] not governed by Revised Article 9.

- **Filing Office Non-Standard Search Logic**
- [This search was performed using the filing office's non-standard search logic.]
- **A search under the correct name of the debtor using the filing office non-standard search logic may reflect financing statements that may be deemed ineffective under Revised Article 9, because such financing statements may not be reflected on a search using the filing office standard search logic.** Filing office non-standard search logic may be utilized to discover financing

statements recorded under the incorrect name of the debtor before the [Insert Effective Date of RA9] that may be effective until [Insert Transition End Date] when transition to Revised Article 9 in this state is complete. Filing office non-standard search logic may be utilized to discover [Insert other liens such as Federal Liens, etc.] not governed by Revised Article 9.

Standard Search Logic was discussed and a presentation was given but we were not able to finish this endeavor. On that note, the ITS that is Chaired by Trevor Timmons will take this task on and try to bring this to closure before next year's conference.

Indexing rules play an important role in the aforementioned search logic so we are tying that in with the search logic. We discussed and agreed on the following to date but please note that this is a working document: We decided that "Anything other than A-Z, 0-9 will be disregarded" with the exception of a new rule that will be "& becomes and".

Finally, one more issue came out while discussing this resolution and that was the need to recommend uniform search report format. The committee will continue to work on a format so that we can present it to the membership at the next IACA Conference.

Please note that there will be numerous changes recommended to the Model Administrative Rules regarding all that has been mentioned in this section.

9-705:

We discussed in depth the following 2003 resolution.

2. Resolved that IACA's Secured Transaction Section will ask NCCUSL for a comment to clarify section 9-705(c)(2) of the UCC with regard to the lapse date of pre-effective filings that were continued between January 1, 2001 through June 30, 2001.

Steven Weise and Neil Cohen presented their recommendation regarding this topic as well as a draft report that will be presented to NCCUSL/PEB. (See Attached)

9-705 Continuation Statement Business Rules

If a UCC filing with a lapse date between July 1, 2001 and December 31, 2001 was continued, by a continuation statement/UCC3, between January 1, 2001 and June 30, 2001, the Filing Office assigned a new lapse date five years from the original lapse date thus producing a lapse date between July 1, 2006 and December 31, 2006.

The continuation rules for the filings described above are different than the continuation rules for other UCC filings. If a filing falls into the above described category, a larger continuation window is available for the **life** of the filing. The above described filings will have a continuation window beginning January 1 of the lapse year and ending on the lapse date.

We had several drafts of the resolution regarding 9-705 and we finally agreed and passed the resolution that resides at the end of this document. In our haste to draft and present to the STS we left out the following information.

IACA's Secured Transaction Section recommends that filing officers notify all affected secured parties prior to January 1, 2006 as well as post the Permanent Editorial Board approved or adopted report concerning 9-705 on the filing office website.

Although, this was not presented and passed at this year's conference it is recommended that all filing offices notify the affected secured parties prior to January 1, 2006.

The resolution regarding 9-705 resides at the end of this document.

Submit a list to NCCUSL/PEB regarding questions or to gain further clarification on a specific topic:

3. IACA's Secured Transaction Section resolves to form a committee to create a list of RA9 issues to submit to NCCUSL/PEB for consideration and that this committee is authorized to submit its list directly to NCCUSL/PEB without further action by IACA and be it further resolved that the work product from this committee shall be provided to the membership via the list serve for comments for 14 days prior to submission to NCCUSL/PEB.

The Resolution 4 Committee presented the list of RA9 issues that will be submitted to NCCUSL/PEB after it is circulated on the IACA List Serve and the allotted 14 days for comments have expired. I want to say that Trish Bogenrief was instrumental in creating the presentation as well as presenting the lion share of the presentation. (See Attached)

Bogus Filing Project Charter:

Steven Weise and Neil Cohen presented their recommendation regarding this topic. (See Attached) After discussing their recommendation with the membership Steve and Neil stated that they would modify their document and forward their revised recommendation to me so that I could forward via the list serve to the membership. (See attached for their original recommendation)

Forms:

We discussed the National and IACA Model Forms during this year's conference like we do every year. It was recommended that we look at all forms and make a recommendation to NCCUSL that we replace the National Forms that reside in Statute with the IACA Model Forms. I believe it is easier and makes more sense to submit one proposal regarding all forms instead of making recommendations on one form at a time. We, IACA, have modified every form except the UCC 3 addendum. I believe we all know and agree that there isn't a lot on the UCC 3 addendum to modify. Therefore, our first step will be to agree on and vote on all proposed changes at next year's IACA Conference and then we will submit our proposal to IACA.

It was recommended that we have a meeting in the Fall of this year to work on the following topics/issues:

MAR'S

Model Search Reports

Jurisdictions Guidelines for Searching UCC Records

Implementation Guide Standard Search Logic

A date and time will be forthcoming and will be communicated via the BOS/STS/ITS list serves.

We passed the following Resolution at the 2005 IACA Conference:

1. IACA's Secured Transaction Section recognizes that there are a number of filings filed prior to RA9 for which the statute does not clearly define lapse date. A financing statement filed in the second half of 1996 (1991, 1986 etc.) which is continued before the enactment of RA9 (i.e. first half of 2001) may or may not lapse on its natural lapse date, but instead on the date promulgated in section 9-705(c) (i.e. June 30, 2006). The Section therefore recommends that filing officers accept continuations tendered January 1, 2006 through the original lapse date for those filings initially filed in the second half of 1996 (1991, 1986 etc.) and continued in the first half of 2001 (pre-RA9). Additionally, filing officers will not take any position as to the effectiveness of the continuation.