

# Secured Transaction Section (STS) Report

STS/ITS Summit Meeting  
August 22<sup>nd</sup> – August 24<sup>th</sup>

September 28, 2005

Robert Lindsey  
STS Chair

## **Agenda Items:**

1. Model Administrative Rules
2. Implementation Guide for Standard Search Logic
3. 9-705 Transition Rules
4. Jurisdiction Guidelines for Searching UCC Records Chart

## **Model Administrative Rules**

Revisiting an old friend! A lot of folks worked extremely hard back in 2001 to draft a comprehensive IACA Model Administrative Rules document. Although, we have added to it over the years we have not really kept the document up to date. Therefore, I formed a subcommittee to knock off the dust and perform a thorough review of our existing rules. The rules will be presented at the 2006 IACA Conference. It is our (Subcommittee: Chair Darrell Pierce, Tim Poulin, Melissa Wangemann, Shelly Pitlick, Carol Nulty and Robert Lindsey) intention to provide the STS listserv members with an initial draft within the next 60 to 90 days. It is our hope that we will receive enough feedback from everyone so when we present the MAR's in Lake Tahoe it will be pretty much a finished product. Goals are really nice to have!

At the Summit, we went over the entire MAR's and documented potential changes, additions and deletions. Tim Poulin did an excellent job capturing the comments as we progressed through the document. I felt like the level of participation that we received from all of attending jurisdictions was extraordinary. I want to thank everyone personally for their input.

## **Implementation Guide for Standard Search Logic**

Before your eyes start glazing over it wasn't that bad. We tackled this difficult topic in a clear concise manner with prudent examples. It quickly became very clear to me why we historically we have stayed away from this topic. Nothing is easy! All in all, I think everyone in attendance became much more knowledgeable about search logic in general as well as how other jurisdictions use search logic/noise words. For the business user, we put everything in business terms so it would be beneficial to everyone. I think this meeting was a step in the right direction in regards to getting all of the issues/questions out on the table. Now, the subcommittee that has been tasked with developing an implementation guide can draft the guide by answering/addressing the issues/questions. The subcommittee that has been task with this is as follows: Chair Trevor Timmons, Wally Boggus, Kathy Sachs, Carl Ernst, Tim Poulin, Trish Bogenrief, and Robert Lindsey. There are at least 4 to 5 additional names that have been added to this committee that are not reflected because we have not contacted them yet. Please answer your phone when we do...

Below I have listed a few topics/questions/issues that were in my notes. This list is not meant to reflect everything that was discussed but just some of the topics that were discussed.

- Timeline for search engine prototypes?
- Where do we address data entry rules?
- Will there be a published recommendation that will address legacy data issues?
- If we can publish data entry rules and search logic, time itself will handle legacy data issues. But at some point folks have to adopt “Standard” data entry procedures. Data entry is the “Key”.
- Do we replace punctuation (periods) with a space or just remove it is still an issue.
- The IACA Ending Noise Word List is now the Baseline and is to be considered static. (Not to be revised/added to etc...) The only exception is that we will need to add some disclaimers to the list such as this is a model list and you are strongly encourage to inquire with in each jurisdiction to fully understand what noise word list they use.
- What would be the best recommendation in regards to noise words?
  1. Don’t ever add to your noise word list
  2. Don’t ever remove any existing noise words from your list?
  3. Only add noise words to your list that are reflected in you business entity statutes?
  4. Is there a strategy for reducing noise words from you list? Like running existing noise words against your database and if you have noise words that are not currently used your database then remove them from you list?
  5. Will there ever be a strategy to never have noise words? Since noise words seem to be the biggest offender for search logic behaving badly.
  6. We need to produce a document that reflects the IACA Noise Word List by size. (Largest at the top to the smallest at the bottom)

## **9-705 Transition Rules**

Yes we did talk about this again and I wish I could tell you that it is about over, but it isn’t. For those who attended the IACA Conference in New Brunswick and or read my status after the conference, you will recall that a resolution was passed regarding 9-705.

The resolution that was adopted at the 2005 IACA Conference reads as follows:

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.”

In San Antonio, after a spirited debate about this subject matter, it was determined to backtrack from the resolution that was passed at the 2005 IACA Conference. It was felt by the majority of membership that was still in attendance at the end of the last day of Summit that we should take another approach.

What was discussed was this:

- There is no legal authority to expand the window for continuations.
- Bottom line is although there is more than one legal interpretation we need to pick one and stay with it.
- The group was partial to Theory 3 that is illustrated quite nicely in Steve Weise and Neil Cohen’s Presentation that is attached.
- Theory 3 which basically allows the filing office to do absolutely nothing different than what we do today. The natural lapse date doesn’t change and the continuation window remains the same.
- This theory would allow the filing office to reject and educate the filers that try to file in the first half of 2006 before the established 6 month continuation window begins. If they file after 6/30/06, but before the filing lapses, the filing office will accept but obviously it will be too late to educate the filer.
- We all agreed that it is crucial to identify how many filings could be affected on our database and to notify/educate the SP ASAP. (December/January time frame was discussed. The PEB meets and hopefully will approve the draft report that will be submitted during November.) The draft report that was distributed and presented at the last IACA Conference will be modified based on IACA’s change in position.
- We would like all jurisdictions to run a report that will reflect how many filings could possibly be affected. The criterion that needs to be run is as follows: Reflect all UCC filings with a lapse date between July 1, 2001 and December 31, 2001 that were continued, by a continuation statement/UCC3 filed between January 1, 2001 and June 30, 2001. The figures need to be sent to Robert Lindsey ASAP. I will create a chart and distribute via the listserv. I think it is important to understand a few things about these filings.
  - They have been continued at least once already. In VA, we ran a report that showed the percentage of filings with 1 continuation, 2 continuations and 3 or more continuations and the percentage drop off rather dramatically.

- Some of these filings were probably continued because they were uncertain whether they should or not based on RA9 and will not be continued because the filing is not filed in the right jurisdiction.
- The filings that were continued and are filed in the right jurisdiction are most likely rather large filings based on multiple continuations. It is important that we send them information regarding this problem.
- Tim Poulin and I have pulled a variety of these filings and have noticed that some of the debtors are located in jurisdictions other than our home State/Commonwealth.
- Steve and Neil have been gracious enough to agree to draft a sample letter that we can use to send secured parties that fall into this scenario. I hope to receive a draft of this letter within the next 10 business days.

## **Jurisdiction Guidelines for Searching UCC Records Chart**

This is where it got ugly. In order to create a useful chart the subcommittee will need to use what we learned from this endeavor and create a cleaner process. I think we learned a great deal by going through this process, such as a lot of us need to go back to our offices and find out what we do on searches and copy work/retrievals. We all do business very differently and we have our own terminology that we will try to make more consistent through our MAR's. Although painful, I think the exercise was very useful. We will build on this learning experience and make the process in Lake Tahoe a lot better.