

SPECIAL NOTICE

Maintaining Perfection Beyond June 30, 2006 of Security Interests Created and Perfected by Filing Under Former Article 9

The following link is to the Permanent Editorial Board for the Uniform Commercial Code “Report” dated December 19, 2005. <https://www.ali.org/ali/DEC2005PEB-report.pdf> This report discusses some interpretive issues concerning Section 9-705 of the Uniform Commercial Code (UCC), and in particular the further continuation of certain financing statements that were continued during the first half of 2001 that would otherwise have lapsed during the second half of 2001.

Secured parties whose security interests are perfected by financing statements that were filed under former Article 9 of the UCC, and the effectiveness of which has not been continued under revised Article 9 of the UCC, generally need to take action by June 30, 2006, in order to maintain perfection of their security interests. There is, however, one class of cases – financing statements filed under former Article 9 in the same state and office as required by revised Article 9 and whose effectiveness would have lapsed after the effective date of revised Article 9 but which were continued by the filing of a continuation statement before that effective date – as to which Section 9-705 presents some interpretive difficulties.

As the Report indicates, though, under any interpretation of Section 9-705, a secured party wishing to continue the effectiveness of such a financing statement can avoid the risk of an untimely (and, therefore, ineffective) continuation if it files its new continuation statement:

- (i) no earlier than six months before the effectiveness of the financing statement would otherwise lapse without regard to the June 30, 2006 cutoff date indicated in UCC Section 9-705(c)(2), and
- (ii) no later than June 30, 2006.