



UCC § 9-705:

Selected Continuation Statement
Issues for Filing Officers and Filers

(rev. July 1, 2005)

Neil Cohen

neil.cohen@brooklaw.edu

Steve Weise

steve.weise@hellerehrman.com

9-705(c)

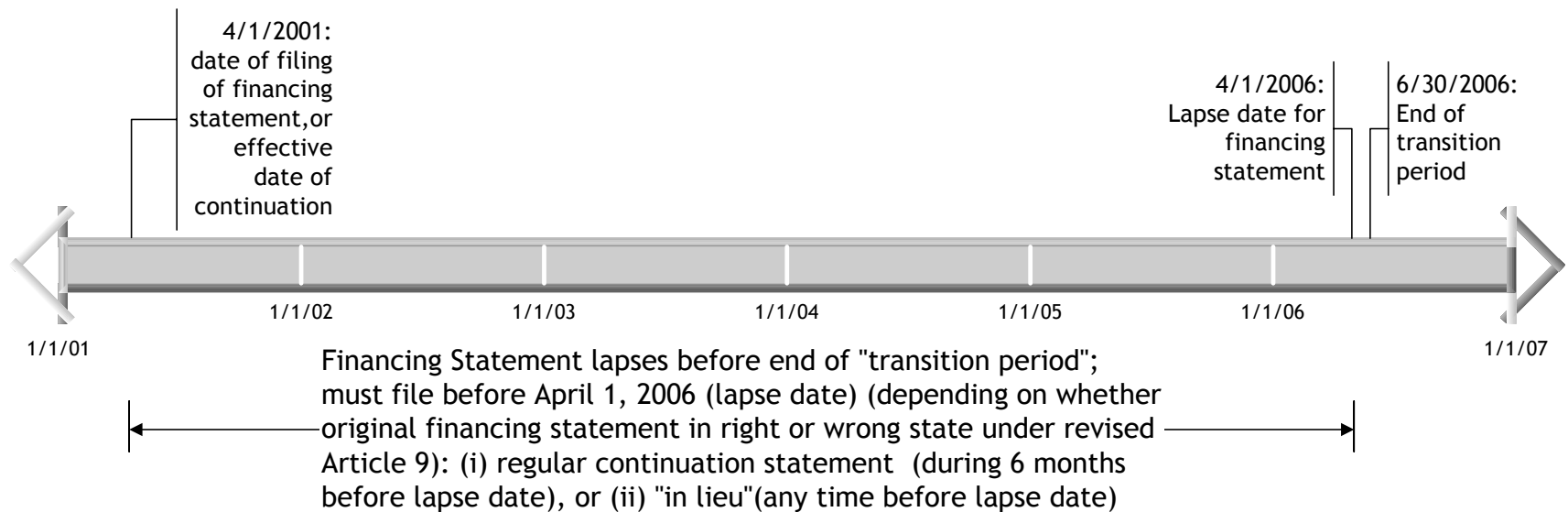
(c) **[Pre-effective-date filing in jurisdiction formerly governing perfection.]** This [Act] does not render ineffective an effective financing statement that, before this [Act] takes effect, is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in [former Section 9-103]. However, except as otherwise provided in subsections (d) and (e) and Section 9-706, the financing statement ceases to be effective at the earlier of:

- (1) the time the financing statement would have ceased to be effective under the law of the jurisdiction in which it is filed; or
- (2) June 30, 2006.

Non-problems: pre-July 1, 2001 lapse

- ✓ Financing statements that would have lapsed in the first half of 2001
- ✓ Continued in first half of 2001 under former Article 9
- ✓ Must continue effectiveness again in first half of 2006
 - 9-705(c) does not apply
- ✓ If original filing not in revised Article 9 state, use 'in lieu'
 - May file at any time before lapse date
- ✓ If original filing in revised Article 9 state, use regular continuation statement
 - May file only during 6 months before lapse date

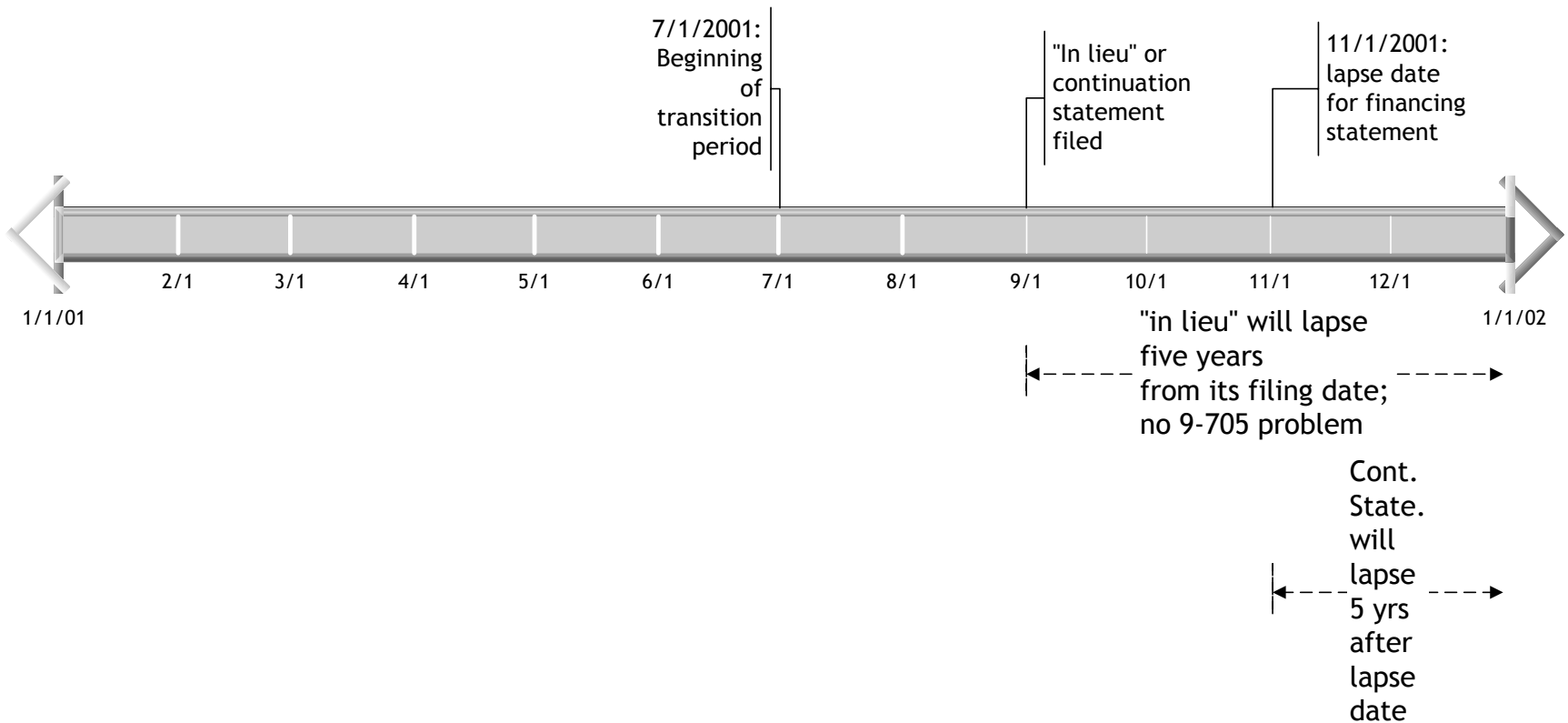
Non-problem: pre-July 1, 2006 lapse



Non-problem: post-June 30, 2001 lapse continued on or after July 1, 2001

- ✓ Financing statement that will lapse in second half of 2001
- ✓ Not continued in first half of 2001
- ✓ Effectiveness continued in second half of 2001:
 - If in former Article 9 state and not revised Article 9 state, use 'in lieu'
 - If in revised Article 9 state, regular continuation

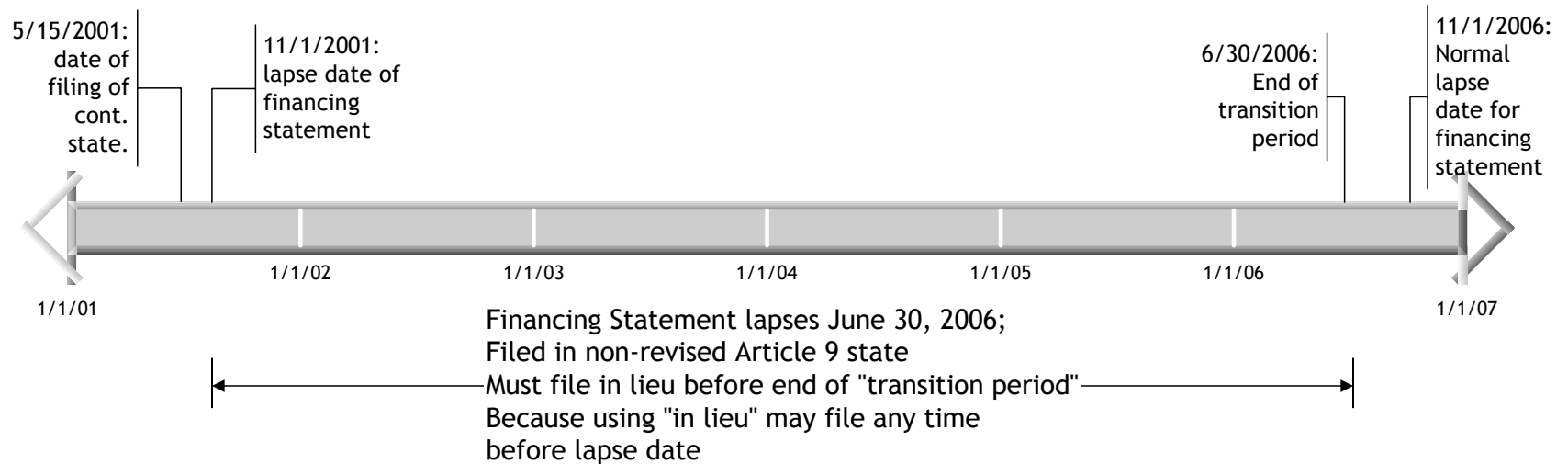
Non-problem: post-June 30, 2001 lapse continued after June 30, 2001



Non-problem: post-June 30, 2001 lapse continued before July 1, 2001 where original filing not in revised Article 9 state

- ✓ Financing statement that will lapse in second half of 2001
 - If in former Article 9 state and not revised Article 9 state
- ✓ Continued in first half of 2001 with regular continuation statement
- ✓ Under former Article 9 would lapse in second half of 2006:
 - Will lapse June 30, 2006 under 9-705(c)
 - May continue with 'in lieu' any time up to June 30, 2006

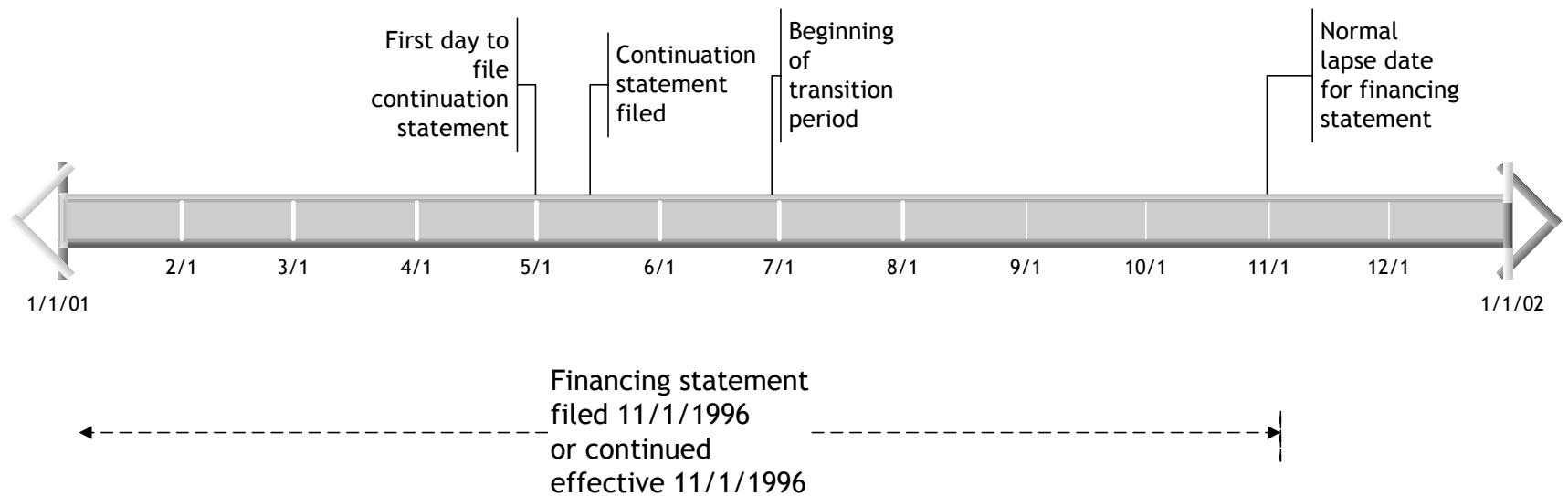
Non-problem: post-June 30, 2001 lapse continued before June 30, 2001 where original filing not in revised Article 9 state



The problem

- ✓ Financing statements first filed in the second half of 1996 (or 1991 . . .)
- ✓ State of filing is correct state under both former Article 9 and revised Article 9
- ✓ Continued in the first half of 2001
 - Use regular continuation statement
 - But for 9-705(c), set to lapse in second half of 2006
- ✓ When can they be continued in 2006?

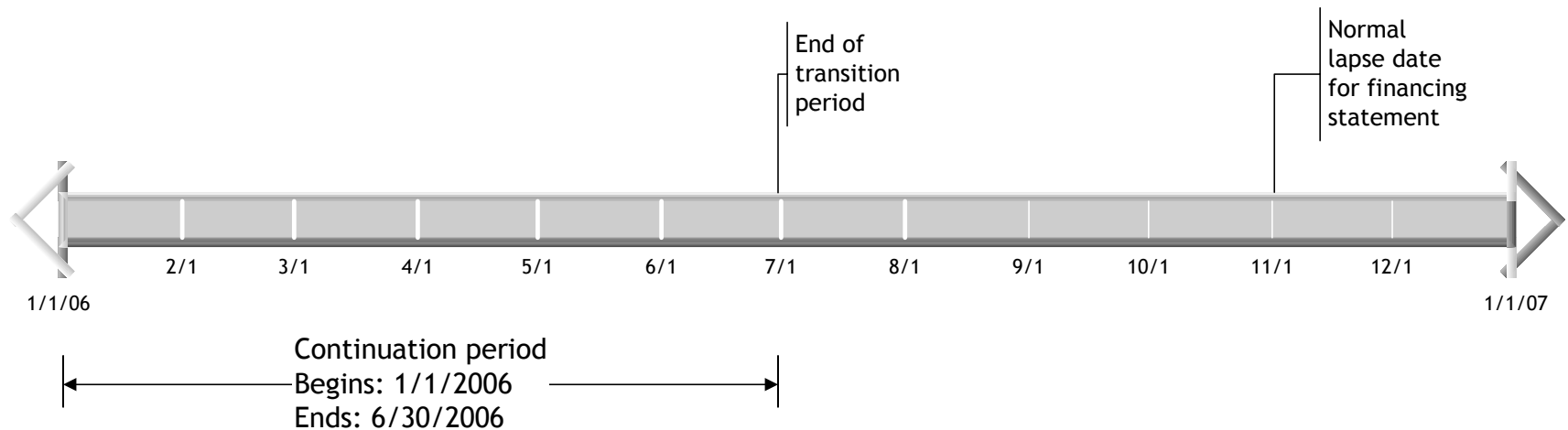
The problem



When to continue: theory #1

- ✓ Financing statement 'lapses' June 30, 2006
- ✓ Therefore 6 month continuation window:
 - Opens: January 1, 2006
 - Closes: June 30, 2006

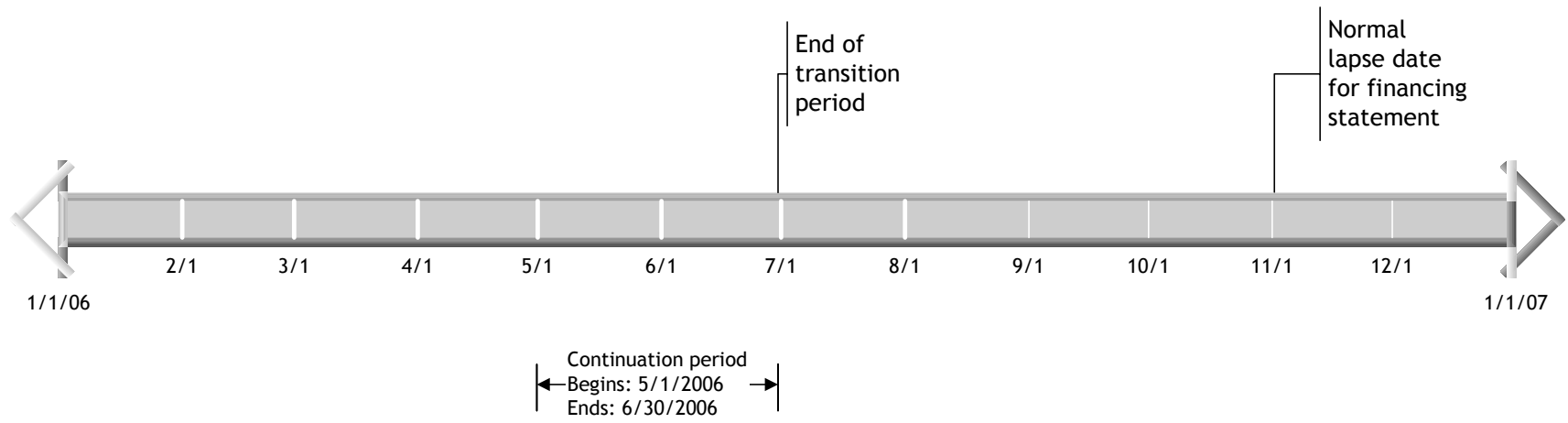
When to continue: theory #1



When to continue: theory #2

- ✓ Financing statement 'lapses'
November 1, 2006
- ✓ Therefore 6 month continuation window:
 - Opens: May 1, 2006
- ✓ But, because of June 30 cut off:
 - Closes: June 30, 2006

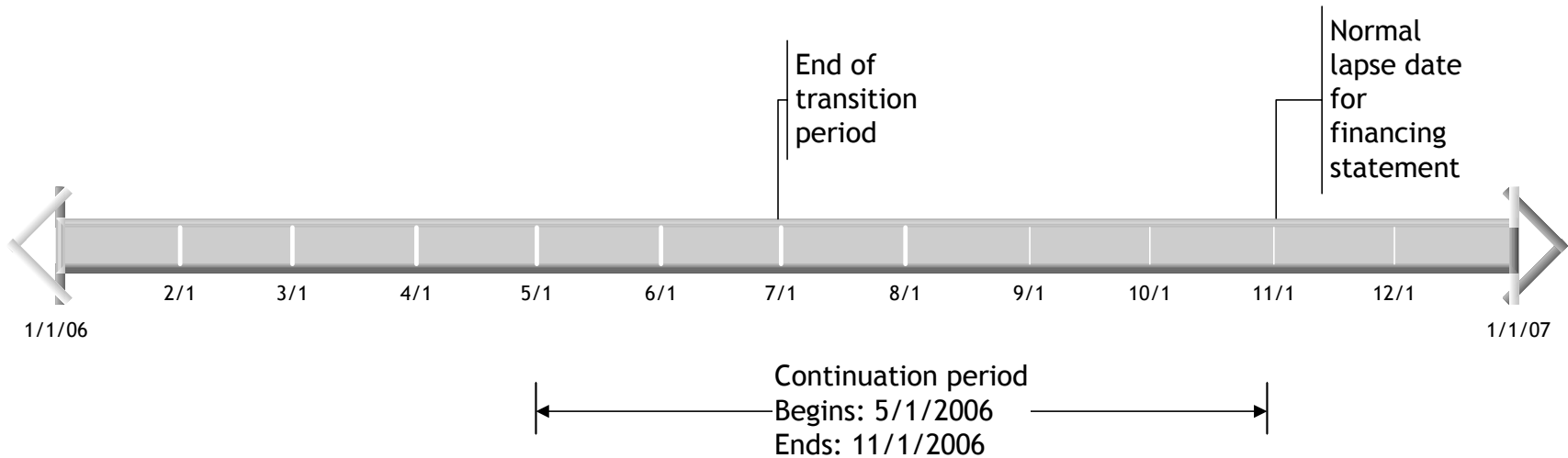
When to continue: theory #2



When to continue: theory #3

- ✓ Financing statement 'lapses'
November 1, 2006
- ✓ Therefore 6 month continuation window:
 - Opens: May 1, 2006
- ✓ But, June 30 cut off does not affect this financing statement:
 - Closes: November 1, 2006

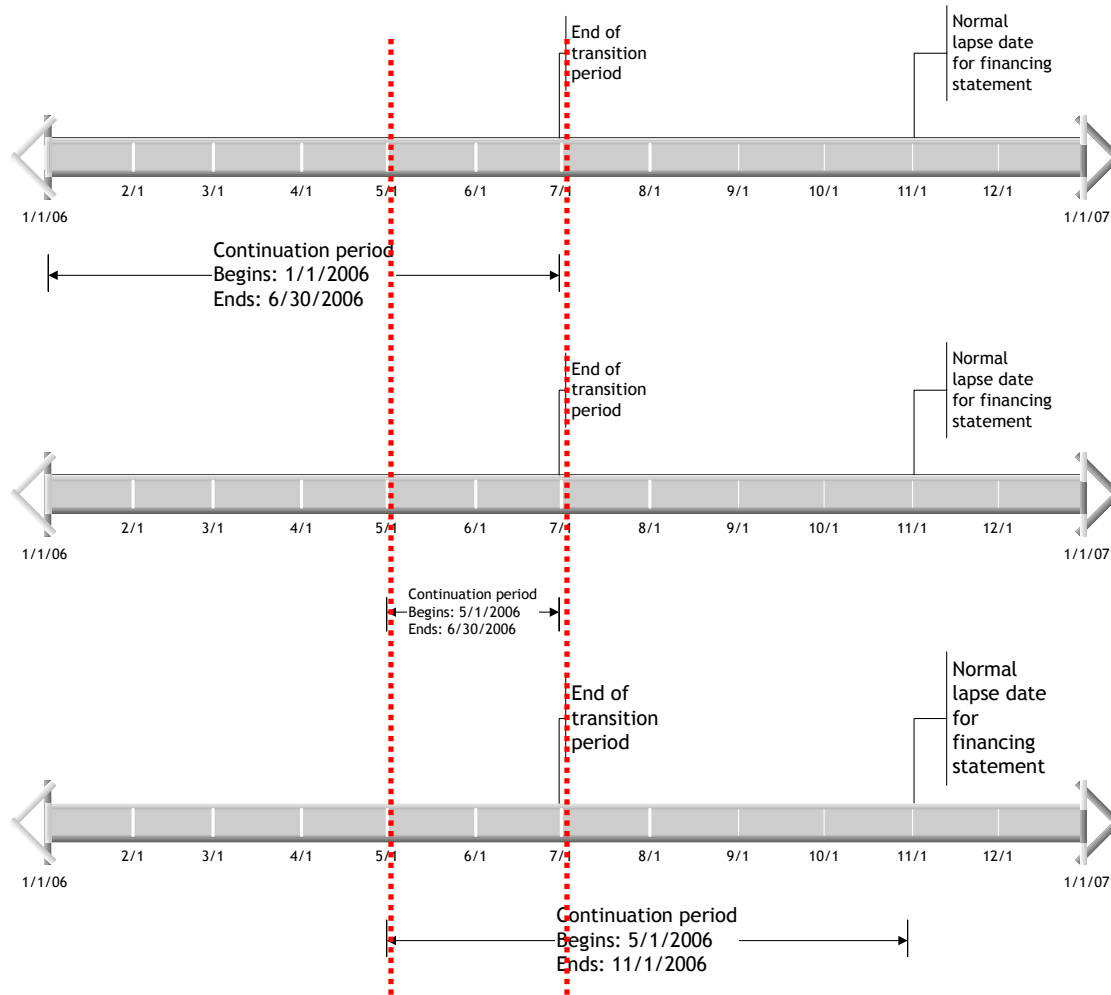
When to continue: theory #3



The solution

- ✓ Under any theory continuation statement will be 'good' if filed:
 - No earlier than: six months before financing statement would lapse but for 9-705(c)
 - No later than: June 30, 2006

The solution



Issues

- ✓ Not sure which theory is 'right'
- ✓ Filers might file pursuant to any one of the three theories
- ✓ Keep filing window open for just these continuation statements:
 - Beginning: January 1, 2006
 - Ending: date financing statement would have lapsed but for 'cut off' of June 30, 2006 in § 9-705(c)



UCC § 9-705:

Selected Continuation Statement Issues for Filing Officers and Filers

Neil Cohen

neil.cohen@brooklaw.edu

Steve Weise

steve.weise@hellerehrman.com