



Bogus filings:

Model statute to address issues
facing ‘debtors’ and secured
parties

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The problem

- ✓ Financing statements filed without ‘authorization’ by the debtor
 - Usually name public officials
 - To harass the public figure
 - To affect credit status of public official

One possible solution

- ✓ Statutory procedure to make it easier to purge bogus filings from the records

Goals of a statutory procedure

- ✓ Come up with way to remove these filings from the index
- ✓ Need simple procedure
- ✓ Need efficient procedure
- ✓ Need fast procedure

Don't create new problems

- ✓ Make sure that procedure does not allow unscrupulous debtors to terminate legitimate financing statements
 - Build in procedures to protect legitimate secured parties
 - At same time make procedure work to terminate bogus financing statements

Proposed statute

- ✓ Developed with assistance from UCC lawyers
- ✓ Not official views of the Permanent Editorial Board of the UCC
 - Some members of PEB seeking to provide assistance in drafting of the model statute
- ✓ Leaves procedural issues to state procedural law

Components of the statute

- ✓ Which kinds of debtors?
- ✓ Which kinds of filings?
- ✓ Notice to secured party?
 - Which address to use?
 - Right to present evidence?
- ✓ Standard of proof?
- ✓ Right to appeal?

Which kind of debtors?

- ✓ Limit to individuals
- ✓ Most political filings not directed at entities
 - Existing procedures sufficient to remove those filings

Which kinds of filings?

- ✓ Original financing statements
- ✓ Amendments
- ✓ Does not cover termination statements
 - Unlikely to have bogus terminations filed against public officials

Notice to secured party

- ✓ Protects against termination of legitimate financing statements by unscrupulous debtors
- ✓ Does not interfere with efficient operation of statute
 - Notice goes to secured party at address in financing statement
 - Either false address or unlikely to show up

Expedited procedure

- ✓ Allows for quick relief to terminate bogus financing statements
- ✓ Protections built in:
 - Notice to secured party
 - ‘Summary judgment’ standard

What's the right standard of proof?

- ✓ 'Summary judgment' standard
 - Taken from the Federal Rules of Civil Procedure
 - To make sure that bogus termination statements cannot sail through
- ✓ Legitimate 'debtor' terminating a bogus financing statement will not have any problem meeting this standard
 - Bogus secured party will not show up
 - Can always use regular court proceeding



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