

**How Do You Handle the Bogus Filer?**  
**What Are the Filing Officer's Responsibilities?**

2010 IACA Conference  
Austin, Texas  
Wednesday, May 26, 2010 (3:00 - 4:30 PM)

**Compiled Statutes:**

**Maine**  
**Michigan**  
**Minnesota**  
**Washington**

**5 §90-E. EXPEDITED REVIEW AND DETERMINATION OF THE  
AUTHORIZATION OF FINANCING STATEMENT RECORDS  
FILED UNDER THE UNIFORM COMMERCIAL CODE; CRIMINAL  
PENALTIES; CIVIL PENALTIES AND INJUNCTIVE RELIEF**

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AUTHORIZATION OF FINANCING STATEMENT RECORDS FILED UNDER THE  
UNIFORM COMMERCIAL CODE; CRIMINAL PENALTIES; CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Authorized," when used with reference to a financing statement record, means that the financing statement record was filed by a person authorized to do so as provided in Title 11, sections 9-1509 and 9-1708. [2007, c. 228, §1 (NEW).]

B. "Court" means the Kennebec County Superior Court. [2007, c. 228, §1 (NEW).]

C. "Debtor" means a natural person whose name was provided in a financing statement record as:

(1) An individual debtor; or

(2) One of the types of persons listed in Title 11, section 9-1505, subsection 1. [2007, c. 228, §1 (NEW).]

D. "Filing office" or "filing officer" means the appropriate office or officer where or to whom a financing statement record is to be filed as provided by Title 11, section 9-1501. [2007, c. 228, §1 (NEW).]

E. "Financing statement record" means:

(1) An initial financing statement;

(2) An amendment that adds collateral covered by a financing statement; or

(3) An amendment that adds a debtor to a financing statement.

For purposes of this paragraph, "collateral," "debtor" and "financing statement" have the same meanings as defined in Title 11, section 9-1102. [2007, c. 228, §1 (NEW).]

F. "Movant" means the person filing the motion. [2007, c. 228, §1 (NEW).]

[ 2007, c. 228, §1 (NEW) . ]

**2. Expedited process to review and determine authorization of filing of financing statement records.** This subsection governs the procedure for disputing the authorization for a filing of a financing statement.

A. Any individual who asserts that the filing of a financing statement record that provides that individual's name as a debtor is not an authorized filing may file, at any time, a motion for a judicial declaration that the financing statement record is not an authorized filing under Title 11, section 9-1509 and thus is not effective with respect to that individual under Title 11, section 9-1510. This motion must be filed with the Kennebec County Superior Court. The motion must be supported by the affidavit of the movant setting forth a concise statement of the facts upon which the claim for relief is based. The motion must be in the form that follows:

*MISC. DOCKET No.* .....

In Re: A Purported

Financing Statement In the Kennebec County Superior Court

Against.....In and For .....

(Name of Movant).....Kennebec  
County, State of Maine

*Motion for Judicial Review of the Authorization of a Financing Statement Record Filed Under the Uniform Commercial Code, the Maine Revised Statutes, Title 11, Article 9-A*

Now Comes

.....  
(name)

(movant) and files this motion requesting a judicial determination of whether the financing statement record filed in the filing office, a copy of which is attached hereto, is not an authorized filing with respect to the movant under the Uniform Commercial Code, Title 11, section 9-1509 or 9-1708 and in support of the motion would show the court as follows:

*I.*

(Name), movant, herein is an individual whose name was provided as an individual debtor in a financing statement record filed under the Uniform Commercial Code, Title 11, Article 9-A, a copy of which is attached hereto.

*II.*

On (date), in the exercise of the filing officer's official duties as (Secretary of State or Register of Deeds), the filing officer received and indexed the financing statement providing the movant's name as an individual debtor and assigned the following file number, ..... to the record, bearing the following date of filing, .....

*III.*

Movant alleges that the financing statement record is not an authorized filing with respect to movant and that this court should declare the financing statement record ineffective with respect to movant for that reason.

*IV.*

Movant attests that assertions herein are true and correct.

*V.*

Movant does not request the court to make a finding as to any underlying claim of any person and asserts that this motion does not seek review of an effective financing statement record. Movant acknowledges that movant may be subject to sanctions if this motion is determined to be frivolous or intentionally wrongful.

*PRAYER*

Movant requests the court to review the attached documentation and enter an order finding that said financing statement record was filed by a person not authorized to do so with respect to movant and is for that reason not an authorized filing with respect to movant and, therefore, has no effect with respect to movant, together with such other findings as the court deems appropriate.

Respectfully submitted,

.....  
(Signature and typed name and address)

[ 2007, c. 228, §1 (NEW). ]

B. The completed form for ordinary certificate of acknowledgment must be as follows:

*AFFIDAVIT*

STATE OF MAINE

COUNTY OF .....

BEFORE ME, the undersigned authority, personally appeared ..... who, being by me duly sworn, deposed as follows:

"My name is..... I am over 18 years of age, of sound mind, with personal knowledge of the following facts, and fully competent to testify. I further attest that the assertions contained in the accompanying motion are true and correct."

Further affiant sayeth not.

SUBSCRIBED and SWORN TO before me, this ..... day  
of ....., .....

NOTARY PUBLIC, State of Maine

Notary's signature: .....

Notary's printed name: .....

My commission expires: .....

[ 2007, c. 228, §1 (NEW) . ]

C. The clerk of the court may not collect a filing fee for filing a motion as provided in this subsection. [ 2007, c. 228, §1 (NEW) . ]

D. The court's finding may be made solely on a review of the documentation attached to the motion and the responses, if any, of the person named as a secured party in the financing statement record and without hearing any oral testimony if none is offered by the secured party. The court's review may be made only upon not less than 20 days' notice to each person named as a secured party in the financing statement record. Notice must be given to each secured party. Notice may be given to each secured party at the address given in the financing statement record as an address of that secured party by mail or personal service as provided in the Maine Rules of Civil Procedure. Each person named as a secured party in the financing statement record may respond to the motion based on pleadings, depositions, admissions and affidavits. The court's review of the pleadings, depositions, admissions and affidavits must be made on an expedited basis. [ 2007, c. 228, §1 (NEW) . ]

E. The court shall enter judgment in favor of the movant only if the pleadings, depositions, admissions and affidavits on file show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. [ 2007, c. 228, §1 (NEW) . ]

F. After review, the court shall enter an appropriate finding of fact and conclusion of law in a form as provided in paragraph G regarding the financing statement record, an attested copy of which must be filed and indexed under the movant's name in the filing office where the original financing statement record was filed. The filing office may not collect a filing fee for filing the court's finding of fact and conclusion of law as provided in this section. A copy of the finding of fact and conclusion of law must be sent by the court to the movant, to each person named as a secured party in the financing statement record at the address of each person set forth in the financing statement and to the filing office. The copy must be sent within 7 days following the date that the finding of fact and conclusion of law are issued by the court. The secured party may appeal the finding of fact and conclusion of law as provided in the Maine Rules of Appellate Procedure. In addition to the notice requirements of those rules, the secured party shall give notice of the appeal to the filing office. [ 2007, c. 228, §1 (NEW) . ]

G. The finding of fact and conclusion of law must be in substantially the following form:

*MISC. DOCKET No.* .....

In Re: A Purported

Financing Statement In the Kennebec County Superior Court

Against ..... In and For .....

(Name of Movant) .....

Kennebec County, State of Maine

*Judicial Finding of Fact and Conclusion of Law Regarding the Authorization of a Financing Statement Record Filed Under the Uniform Commercial Code*

On the (number) day of (month), (year), in the above entitled and numbered cause, this court reviewed a motion, verified by affidavit, of (name), the documentation attached thereto, and the pleadings, depositions, admissions and affidavits submitted by the secured party, if any. Notice was given to each person named as a secured party in the financing statement record as provided by law to the secured party's address as provided in the Uniform Commercial Code, the Maine Revised Statutes, Title 11, Article 9-A. No oral testimony was taken from any party, the court having made the determination that a decision could be made solely on review of the documentation provided hereunto.

The court finds as follows (only an item initialed is a valid court ruling):

.....The financing statement record providing movant's name as an individual debtor attached to the motion IS an authorized filing as to movant under the Uniform Commercial Code, Title 11, section 9-1509 or 9-1708.

.....The financing statement record providing movant's name as an individual debtor attached to the motion IS NOT an authorized filing as to movant under the Uniform Commercial Code, Title 11, section 9-1509 or 9-1708 and, therefore, is not effective with respect to movant.

This court makes no finding as to any underlying claims of the parties involved and expressly limits its finding of fact and conclusion of law to the review of whether authorization for the filing exists. Insofar as it affects movant, the filing officer shall remove the subject financing statement record from the index so that the record is not reflected in or obtained as a result of any search, standard or otherwise, conducted of the records of the filing office under the movant's name upon the occurrence of both of the following:

A. Receipt of a finding of fact and conclusion of law that the documentation attached to the motion IS NOT an authorized financing statement naming movant as an individual debtor under the Uniform Commercial Code, Title 11, section 9-1509 or 9-1708 and, therefore, is not effective with respect to movant; and

B. The earlier of:

(i) The lapse of any period for appeal without an appeal having been taken; and

(ii) The decision becoming final following any appeal.

The filing office shall retain the subject financing statement record and this finding of fact and conclusion of law in the filing office for the duration of the period for which they would have otherwise been retained. This finding of fact and conclusion of law, but not the financing statement record, shall be indexed under the movant's name.

SIGNED ON THIS THE .....DAY OF.....

.....Justice, Maine Superior Court

[ 2007, c. 228, §1 (NEW) . ]

H. This subsection is cumulative of other law under which a person may obtain judicial relief with respect to any filed or recorded document. [ 2007, c. 228, §1 (NEW) . ]

[ 2007, c. 228, §1 (NEW) . ]

**3. Criminal penalty.** A violation of this section is governed by Title 17-A, section 706-A.

[ 2007, c. 228, §1 (NEW) . ]

**4. Civil penalty and injunction.** A person who violates this subsection is subject to civil penalties and other relief as provided in this subsection.

A. A person may not knowingly cause to be presented for filing in a filing office or promote the filing in a filing office of a financing statement record that the person knows:

- (1) Is not authorized under Title 11, section 9-1509 or 9-1708 by the natural person whose name was provided as an individual debtor in the financing statement record;
- (2) Was filed or presented for filing with the intent that the financing statement record be used to harass or hinder the natural person whose name was provided as an individual debtor in the financing statement record without that person's authorization; or
- (3) Was filed or presented for filing with the intent that the financing statement record be used to defraud any person. [ 2007, c. 228, §1 (NEW) . ]

B. A person who violates this subsection is liable to each debtor under paragraph A for:

- (1) The greater of:
  - (a) \$10,000; and
  - (b) The actual damages caused by the violation;
- (2) Court costs;
- (3) Reasonable attorney's fees;
- (4) Related expenses of bringing the action, including investigative expenses; and
- (5) Punitive damages in the amount determined by the court. [ 2007, c. 228, §1 (NEW) . ]

C. The following persons may bring an action to enjoin a violation of this subsection or to recover damages under this subsection:

- (1) The natural person whose name was provided as an individual debtor in the financing statement record filed without that person's authorization under Title 11, section 9-1509 or 9-1708 or any guardian, conservator, executor, administrator or other legal representative of that person, a person who owns an interest in the collateral described or indicated in the financing statement record or a person directly harmed by the filing of the financing statement record; and
- (2) The Attorney General. [ 2007, c. 1, §1 (COR) . ]

D. A filing officer may refer a matter to the Attorney General for filing the legal actions under this subsection. [ 2007, c. 228, §1 (NEW) . ]

E. An action under this subsection may be brought in any court in Kennebec County or in a county where any of the persons named in the cause of action under this subsection resides. [ 2007, c. 228, §1 (NEW) . ]

F. The fee for filing an action under this subsection is \$25. The plaintiff must pay the fee to the clerk of the court in which the action is filed. The plaintiff may not be assessed any other fee, cost, charge or expense by the clerk of the court. [ 2007, c. 228, §1 (NEW) . ]

G. A plaintiff who is unable to pay the filing fee and fee for service of notice may follow the court procedures to waive such fees. [ 2007, c. 228, §1 (NEW) . ]

H. If the fee imposed under paragraph F is less than the filing fee the court imposes for filing other similar actions and the plaintiff prevails in the action, the court may order a defendant to pay to the court the difference between the fee paid under paragraph F and the filing fee the court imposes for filing other similar actions. [ 2007, c. 228, §1 (NEW) . ]

I. This subsection is cumulative of other law under which a person may obtain judicial relief with respect to any filed or recorded document. This subsection is not intended to be an exclusive remedy. [ 2007, c. 228, §1 (NEW). ]

[ 2007, c. 1, §1 (COR) . ]

SECTION HISTORY

2007, c. 228, §1 (NEW). RR 2007, c. 1, §1 (COR).

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**UNIFORM COMMERCIAL CODE (EXCERPT)**  
**Act 174 of 1962**

**440.9501a Fraudulent financing statement; affidavit; form; notice; termination of financing statement; filing fee; notice of termination; action to reinstate financing statement; court order; payment of costs and expenses; violation as felony; penalty; "regulated financial institution" defined.**

Sec. 9501a. (1) A person identified as a debtor in a financing statement filed with the secretary of state may file an affidavit with the secretary of state in the form prescribed under subsection (2) stating that the financing statement is fraudulent. A person shall not file an affidavit under this subsection with respect to a financing statement filed by a regulated financial institution or a representative of a regulated financial institution.

(2) The secretary of state shall adopt and make available a form affidavit to be used to give notice of a fraudulent financing statement under subsection (1).

(3) On receipt of an affidavit under subsection (1), the secretary of state shall terminate the financing statement effective on the date the affidavit is filed.

(4) The secretary of state shall not charge a fee to file an affidavit under this section. The secretary of state shall not return any filing fee paid for filing the financing statement, regardless of whether the financing statement is terminated under this section.

(5) The secretary of state shall send notice of the termination of a financing statement under subsection (3) to the filer of the financing statement advising the filer that the financing statement has been terminated. If the filer of the financing statement believes in good faith that the statement was legally filed and is not fraudulent, the filer may file an action to reinstate the financing statement.

(6) If the court in an action under this section or section 9520(7) determines that the financing statement should be reinstated or accepted, the court shall provide a copy of its order to the secretary of state. On receipt of an order reinstating a financing statement, the secretary of state shall file a record that identifies by its file number the initial financing statement to which the record relates and indicates that the financing statement has been reinstated.

(7) On the filing of a record reinstating a financing statement under subsection (6), the financing statement is effective as a filed record from the initial filing date. If a financing statement that is reinstated would have lapsed during the period of termination, the secured party may file a continuation statement within 30 days after the record reinstating the financing statement is filed. The continuation statement is effective as a filed record from the date the financing statement would have lapsed. However, a financing or continuation statement is not retroactive as provided in this subsection as against a purchaser of the collateral that gives value in reasonable reliance on the absence of the record from the files.

(8) If the court in an action under this section determines that the financing statement is fraudulent, the filer of the financing statement shall pay the costs and expenses incurred by the person identified as a debtor in the financing statement in the action.

(9) An individual who files a materially false or fraudulent affidavit under subsection (1) is guilty of a felony punishable by imprisonment for not more than 5 years or a \$2,500.00 fine, or both.

(10) As used in this section, "regulated financial institution" means a financial institution subject to regulatory oversight or examination by a state or federal agency. Regulated financial institution includes a bank, savings bank, savings association, building and loan association, credit union, consumer finance company, industrial bank, industrial loan company, insurance company, investment company, installment seller, mortgage servicer, sales finance company, or leasing company.

**History:** Add. 2008, Act 381, Eff. Mar. 29, 2009.

**UNIFORM COMMERCIAL CODE (EXCERPT)**  
**Act 174 of 1962**

**440.9515 Duration and effectiveness of financing statement; effect of lapsed financing statement; continuation statement; termination.**

Sec. 9515. (1) Except as otherwise provided in subsections (2), (5), (6), and (7), a filed financing statement is effective for a period of 5 years after the date of filing.

(2) Except as otherwise provided in subsections (5), (6), and (7), an initial financing statement filed in connection with a manufactured-home transaction is effective for a period of 30 years after the date of filing if it indicates that it is filed in connection with a manufactured-home transaction.

(3) The effectiveness of a filed financing statement lapses on the expiration of the period of its effectiveness unless before the lapse a continuation statement is filed pursuant to subsection (4). Upon lapse, a financing statement ceases to be effective and any security interest or agricultural lien that was perfected by the financing statement becomes unperfected, unless the security interest is perfected otherwise. If the security interest or agricultural lien becomes unperfected upon lapse, it is deemed never to have been perfected as against a purchaser of the collateral for value.

(4) A continuation statement may be filed only within 6 months before the expiration of the 5-year period specified in subsection (1) or the 30-year period specified in subsection (2), whichever is applicable.

(5) Except as otherwise provided in section 9510, upon timely filing of a continuation statement, the effectiveness of the initial financing statement continues for a period of 5 years commencing on the day on which the financing statement would have become ineffective in the absence of the filing. Upon the expiration of the 5-year period, the financing statement lapses in the same manner as provided in subsection (3), unless, before the lapse, another continuation statement is filed pursuant to subsection (4). Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the initial financing statement.

(6) If a debtor is an organization identified as a transmitting utility and a filed initial financing statement so indicates, the financing statement is effective until a termination statement is filed. A financing statement that is filed before the effective date of the amendatory act that added this sentence is effective for a period of 5 years after the date of filing and shall not be continued under this section if the financing statement indicates either of the following:

(a) That the debtor is an individual purporting to be a transmitting utility.

(b) That the debtor is an individual showing his or her name as an organization and purporting to be a transmitting utility.

(7) A record of a mortgage that is effective as a financing statement filed as a fixture filing under section 9502(3) remains effective as a financing statement filed as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real property.

**History:** Add. 2000, Act 348, Eff. July 1, 2001;—Am. 2008, Act 383, Eff. Mar. 29, 2009.

**UNIFORM COMMERCIAL CODE (EXCERPT)**  
**Act 174 of 1962**

**440.9516 Filing; requirements; communication of record with tender of filing fee; effectiveness.**

Sec. 9516. (1) Except as otherwise provided in subsection (2), communication of a record to a filing office and tender of the filing fee or acceptance of the record by the filing office constitutes filing.

(2) Filing does not occur with respect to a record that a filing office refuses to accept because of 1 or more of the following:

(a) The record is not communicated by a method or medium of communication authorized by the filing office.

(b) An amount equal to or greater than the applicable filing fee is not tendered.

(c) The filing office is unable to index the record because of 1 or more of the following:

(i) In the case of an initial financing statement, the record does not provide a name for the debtor.

(ii) In the case of an amendment or correction statement, the record does not identify the initial financing statement as required by section 9512 or 9518, as applicable, or identifies an initial financing statement whose effectiveness has lapsed under section 9515.

(iii) In the case of an initial financing statement that provides the name of a debtor identified as an individual or an amendment that provides a name of a debtor identified as an individual that was not previously provided in the financing statement to which the record relates, the record does not identify the debtor's last name.

(iv) In the case of a record filed or recorded in the filing office described in section 9501(1)(a), the record does not provide a sufficient description of the real property to which it relates.

(d) In the case of an initial financing statement or an amendment that adds a secured party of record, the record does not provide a name and mailing address for the secured party of record.

(e) In the case of an initial financing statement or an amendment that provides a name of a debtor which was not previously provided in the financing statement to which the amendment relates, the record does not provide or indicate 1 or more of the following:

(i) Provide a mailing address for the debtor.

(ii) Indicate whether the debtor is an individual or an organization.

(iii) If the financing statement indicates that the debtor is an organization, provide 1 or more of the following:

(A) A type of organization for the debtor.

(B) A jurisdiction of organization for the debtor.

(C) An organizational identification number for the debtor or indicate that the debtor has none.

(f) In the case of an assignment reflected in an initial financing statement under section 9514(1) or an amendment filed under section 9514(2), the record does not provide a name and mailing address for the assignee.

(g) In the case of a continuation statement, the record is not filed within the 6-month period prescribed by section 9515(4).

(3) For purposes of subsection (2), both of the following apply:

(a) A record does not provide information if the filing office is unable to read or decipher the information.

(b) A record that does not indicate that it is an amendment or identify an initial financing statement to which it relates, as required by section 9512, 9514, or 9518, is an initial financing statement.

(4) A record that is communicated to the filing office with tender of the filing fee, but which the filing office refuses to accept for a reason other than one set forth in subsection (2) or section 9520(5), is effective as a filed record except as against a purchaser of the collateral which gives value in reasonable reliance upon the absence of the record from the files.

**History:** Add. 2000, Act 348, Eff. July 1, 2001;—Am. 2008, Act 383, Eff. Mar. 29, 2009.

**UNIFORM COMMERCIAL CODE (EXCERPT)**  
**Act 174 of 1962**

**440.9520 Acceptance and refusal to accept record; wrongful filing; action to require secretary of state to accept record; personal liability; filing by regulated financial institution.**

Sec. 9520. (1) A filing office shall refuse to accept a record for filing for a reason set forth in section 9516(2) or, if the filing office is the secretary of state, subsection (5) and may refuse to accept a record for filing only for a reason set forth in section 9516(2) or, if the filing office is the secretary of state, subsection (5).

(2) If a filing office refuses to accept a record for filing, it shall communicate to the person that presented the record the fact of and reason for the refusal and the date and time the record would have been filed had the filing office accepted it. The communication must be made at the time and in the manner prescribed by filing-office rule but, in the case of a filing office described in section 9501(1)(b), in no event more than 2 business days after the filing office receives the record.

(3) A filed financing statement satisfying section 9502(1) and (2) is effective, even if the filing office is required to refuse to accept it for filing under subsection (1). However, section 9338 applies to a filed financing statement providing information described in section 9516(2)(e) that is incorrect at the time the financing statement is filed.

(4) If a record communicated to a filing office provides information that relates to more than 1 debtor, this part applies as to each debtor separately.

(5) Notwithstanding any other provision of this act, if a person presents a record to the secretary of state for filing or recording, the secretary of state may refuse to accept the record for filing or recording if 1 or more of the following circumstances exist:

- (a) The record is not required or authorized to be filed or recorded with the secretary of state.
- (b) The record is being filed or recorded for a purpose outside the scope of this article.
- (c) The secretary of state has reasonable cause to believe the record is materially false or fraudulent.

(d) The record asserts a claim against a current or former employee or officer of a federal, state, county, or other local governmental unit that relates to the performance of the officer's or employee's public duties, and for which the filer does not hold a properly executed security agreement or judgment from a court of competent jurisdiction.

(e) The record indicates that the debtor and the secured party are substantially the same or that an individual debtor is a transmitting utility.

(6) If a correction statement filed with the secretary of state under section 9518 alleges that a previously filed record was wrongfully filed, the secretary of state shall, without undue delay, determine whether the contested record was wrongfully filed. To determine whether the record was wrongfully filed, the secretary of state may require the person who filed the correction statement or the secured party to provide any additional relevant information requested by the secretary of state, including an original or copy of a security agreement that is related to the record. If the secretary of state finds that the record was wrongfully filed, the secretary of state shall terminate the record and the record is void and ineffective. The secretary of state shall notify the secured party named in the contested record of the termination.

(7) If the secretary of state refuses to accept a record for filing or recording pursuant to subsection (5), the person who presented the record to the secretary of state may commence an action under section 9501a to require the secretary of state to accept the record for filing or recording. A record ordered by the court to be accepted is effective as a filed record from the initial filing date except as against a purchaser of the collateral which gives value in reasonable reliance on the absence of the record from the files.

(8) A filing officer who, acting in a manner that does not subject the filing officer to personal liability under the statutes of this state, improperly refuses to accept a record for filing or recording under subsection (5) is not personally liable for the improper refusal or determination.

(9) Subsection (5) does not apply to a financing statement filed by a regulated financial institution or a representative of a regulated financial institution. If a regulated financial institution that is attempting to file a financing statement is organized under the law of a governmental unit other than this state, the secretary of state may request the regulated financial institution or its representative to provide verification of regulation or licensure in the jurisdiction under whose law the institution is organized. As used in this subsection, "regulated financial institution" means that term as defined in section 9501a.

**History:** Add. 2000, Act 348, Eff. July 1, 2001;—Am. 2008, Act 383, Eff. Mar. 29, 2009.



MICHIGAN DEPARTMENT OF STATE

Uniform Commercial Code Section  
P.O. Box 30197  
Lansing, Michigan 48909-7697  
[www.michigan.gov/sosucc](http://www.michigan.gov/sosucc)

<DATE>

RE: Michigan Uniform Commercial Code  
Financing Statement<FILING\_NUM1>  
Job Number: <JOB\_NUM>

Your name has been shown as a debtor with the Michigan Department of State UCC filing office on financing statement<FILING\_NUM2>. A copy of <THIS\_STMT> attached for your review.

The following secured parties are listed on the financing statement:

***What is a financing statement?***

A financing statement is a public notice of a security agreement between a debtor (borrower) and a secured party (lender) and shows what property or items are used as collateral. The State UCC filing office is a central location where potential lenders can search to ensure collateral is not already encumbered. The State UCC filing office is not a consumer credit bureau and does not provide information to consumer credit agencies. For more information about financing statements, visit the UCC website at [www.michigan.gov/sosucc](http://www.michigan.gov/sosucc), then go to the *Uniform Commercial Code Home Page*.

***What do I need to do?***

- If you did enter into a security agreement with this lender, and all the information is correct, you do not need to take any action with the State UCC filing office. When you have satisfactorily completed your obligation, the lender will file an amendment financing statement terminating the lien.
- If you entered into a security agreement but the attached filing contains errors, contact your lender. The lender can file a statement to fix those errors.
- If you have been identified as a debtor in a financing statement with the Secretary of State and you believe that the financing statement has been erroneously or fraudulently filed, you have several options:

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<SEND\_TO\_ADDR>

- First, you may record a correction statement with the State UCC filing office explaining why you believe this financing statement is inaccurate or wrongfully filed. A correction statement may be filed at no charge via the Internet at [www.michigan.gov/sosucc](http://www.michigan.gov/sosucc). The Secretary of State will review the financing statement and if the record appears to be fraudulent the Secretary of State may take action according to Michigan Compiled Laws 440.9520 and terminate the financing statement. This method is the easiest to use.
- Second, in accordance with Michigan Compiled Laws 440.9501a, you may file an affidavit with the Secretary of State indicating that the financing statement is fraudulent. Affidavit forms are available by sending an e-mail to [UCCSection@michigan.gov](mailto:UCCSection@michigan.gov) and require notarization. After receiving a properly completed form the Secretary of State may terminate the fraudulent financing statement. By law, a person shall not file an affidavit with respect to a regulated financial institution. An individual who files a materially false or fraudulent affidavit under subsection (1) is guilty of a felony punishable by imprisonment for not more than five years or a \$2,500.00 fine, or both.
- Third, in accordance with Michigan Compiled Laws 440.9501, you may initiate a court action against the person who filed the financing statement. In the court action, you may seek appropriate equitable relief or damages, including, but not limited to, an order declaring the financing statement ineffective and ordering the UCC office to terminate the financing statement. The person who filed the financing statement may be convicted of a felony with up to five years imprisonment, up to \$2,500 in fines and ordered to pay reasonable attorney fees and restitution. To initiate a court action, seek legal counsel.
- Fourth, you may choose to take no action. Most filings automatically expire after five years unless continued by the lender.

If you have questions, contact us at [UCCSection@michigan.gov](mailto:UCCSection@michigan.gov) or call (517) 322-1144. Please have this document available when calling.

Sincerely,

Michigan Department of State

UCC Filing Office

**604.17 CIVIL LIABILITY FOR FRAUDULENT OR OTHERWISE IMPROPER FINANCING STATEMENTS.**

Subdivision 1. **Definitions.** For purposes of this section:

(1) "financing statement" has the meaning given in section 336.9-102(a) of the Uniform Commercial Code; and

(2) "filing officer" is defined as Uniform Commercial Code filing officer in each jurisdiction.

Subd. 2. **Liability.** (a) A person shall not knowingly cause to be presented for filing or promote the filing of a financing statement that the person knows:

(1) is forged;

(2) is not:

(i) related to a valid lien or security agreement; or

(ii) filed pursuant to section 336.9-502(d); and

(3) is for an improper purpose or purposes, such as to harass, hinder, defraud, or otherwise interfere with any person.

(b) A person who violates paragraph (a) is liable to each injured person for:

(1) the greater of:

(i) nominal damages up to \$10,000; or

(ii) the actual damages caused by the violation;

(2) court costs;

(3) reasonable attorney fees;

(4) related expenses of bringing the action, including investigative expenses; and

(5) exemplary damages in the amount determined by the court.

Subd. 3. **Cause of action.** (a) The following persons may bring an action to enjoin violation of this section or to recover damages under this section:

(1) the obligor, the person named as the debtor, any person who owns an interest in the collateral described or indicated in the financing statement, or any person harmed by the filing of the financing statement;

(2) the attorney general;

(3) a county attorney;

(4) a city attorney; and

(5) a person who has been damaged as a result of an action taken in reliance on the filed financing statement.

(b) A filing officer may refer a matter to the attorney general or other appropriate person for filing the legal actions under this section.

Subd. 4. **Venue.** An action under this section may be brought in any district court in the county in which the financing statement is presented for filing or in a county where any of the persons named in subdivision 3, paragraph (a), clause (1), resides.

Subd. 5. **Filing fee.** (a) The fee for filing an action under this chapter is \$..... The plaintiff must pay the fee to the clerk of the court in which the action is filed. Except as provided by paragraph (b), the plaintiff may not be assessed any other fee, cost, charge, or expense by the clerk of the court or other public official in connection with the action.

(b) The fee for service of notice of an action under this section charged to the plaintiff may not exceed:

(1) \$..... if the notice is delivered in person; or

(2) the cost of postage if the service is by registered or certified mail.

(c) A plaintiff who is unable to pay the filing fee and fee for service of notice may file with the court an affidavit of inability to pay under the Minnesota Rules of Civil Procedure.

(d) If the fee imposed under paragraph (a) is less than the filing fee the court imposes for filing other similar actions and the plaintiff prevails in the action, the court may order a defendant to pay to the court the differences between the fee paid under paragraph (a) and the filing fee the court imposes for filing other similar actions.

Subd. 6. **Other remedies.** (a) An obligor, person named as a debtor, owner of collateral, or any other person harmed by the filing of a financing statement in violation of subdivision 2, paragraph (a), also may request specific relief, including, but not limited to, terminating the financing statement and removing the debtor named in the financing statement from the index under the provisions of section 545.05, paragraph (c), such that it will not appear in a search under that debtor name.

(b) This law is cumulative of other law under which a person may obtain judicial relief with respect to any filed or recorded document.

**History:** 2006 c 260 art 7 s 12

**545.05 EXPEDITED PROCESS TO REVIEW AND DETERMINE THE EFFECTIVENESS OF FINANCING STATEMENTS.**

Subdivision 1. **Scope.** (a) As used in this section, a financing statement or other record filed in the manner provided by sections 336.9-501 to 336.9-531 of the Uniform Commercial Code - Secured Transactions to perfect a security interest is fraudulent or otherwise improper if it is filed without the authorization of the obligor, person named as debtor, or owner of collateral described or indicated in the financing statement or other record, or by consent of an agent, fiduciary, or other representative of that person or without the consent of the secured party of record in the case of an amendment or termination.

(b) All other financing statements filed in the manner provided by sections 336.9-501 to 336.9-531 to perfect agricultural liens or for purposes outside of the Uniform Commercial Code - Secured Transactions are also fraudulent or otherwise improper and subject to this section if there is no statutory or other legal authority therefor.

(c) As used in this section, filing office or filing officer refers to the office or officer where a financing statement or other record is appropriately filed or recorded as provided by law, including, but not limited to, the county recorder, the secretary of state, and other related filing officers.

Subd. 2. **Motion.** An obligor, person named as a debtor, or owner of collateral described or indicated in a financing statement or other record filed in the manner provided by sections 336.9-501 to 336.9-531, who has reason to believe that the financing statement or other record is fraudulent or otherwise improper may complete and file at any time a motion for judicial review of the effectiveness of the financing statement or other record. A secured party of record who believes that an amendment or termination of a financing statement or other record is fraudulent or otherwise improper may also file a motion.

Subd. 3. **Service and filing.** (a) The motion under subdivision 2 must be mailed by certified United States mail to the person who is indicated as the secured party on the allegedly fraudulent or improper record at the address listed on the record or, in the case of a filing by the secured party of record, to the address of the person who filed the amendment or termination in question, as listed on the record. The motion must be accompanied by a copy of the record in question, an affidavit of mailing, the form for responding to the motion under subdivision 6, and a copy of the text of this section.

(b) On the day the motion is mailed, a copy of the materials must be filed with the district court of the county in which the financing statement or other record has been filed or in the county of residence of the moving party. The motion must be supported by the affidavit of the moving

party or the moving party's attorney setting forth a concise statement of the facts upon which the claim for relief is based. There is no filing fee for a motion or a response filed under this section.

Subd. 4. **Motion form.** The motion must be in substantially the following form:

In Re: A Purported Financing Statement in the district court of ..... County, Minnesota,  
Against [Name of person who filed the financing statement]

MOTION FOR JUDICIAL REVIEW OF A FINANCING STATEMENT FILED UNDER  
THE UNIFORM COMMERCIAL CODE - SECURED TRANSACTIONS

..... (name of moving party) files this motion requesting a judicial determination of the effectiveness of a financing statement or other record filed in the manner provided by sections 336.9-501 to 336.9-531 of the Uniform Commercial Code - Secured Transactions in the office of the ..... (filing office and location) and in support of the motion provides as follows:

I.

..... (name), the moving party, is the [obligor, person named as a debtor, or owner of collateral described or indicated in] [secured party of record listed in] a financing statement or other record filed in the manner provided in sections 336.9-501 to 336.9-531 of the Uniform Commercial Code.

II.

On ..... (date), in the exercise of the filing officer's official duties as ..... (filing officer's position), the filing officer received and filed or recorded the financing statement or other record, a copy which is attached, that purports to [perfect a security interest or agricultural lien against the obligor, person named as debtor, or the owner of collateral described or indicated in the financing statement or other record] [amend or terminate the financing statement in which the moving party is listed as the secured party of record] [be for a purpose outside of the Uniform Commercial Code - Secured Transactions].

III.

The moving party alleges that the financing statement or other record is fraudulent or otherwise improper and that this court should declare the financing statement or other record ineffective.

IV.

The moving party attests that the assertions in this motion are true and correct.

V.

The moving party does not request the court to make a finding as to any underlying claim of the parties involved. The moving party further acknowledges that the moving party may be subject to sanctions if this motion is determined to be frivolous. The moving party may be contacted by the respondent at:

Mailing Address: (required)

Telephone Number:

Facsimile Number: (either facsimile or e-mail contact is required)

E-Mail Address: (either facsimile or e-mail contact is required)

REQUEST FOR RELIEF

The moving party requests the court to review the attached documentation and enter an order finding that the financing statement or other record is ineffective together with other findings as the court deems appropriate.

Respectfully submitted, ..... (Signature and typed name and address).

Subd. 5. **Motion acknowledgment form.** The form for the certificate of acknowledgment must be substantially as follows:

AFFIDAVIT

THE STATE OF MINNESOTA COUNTY OF .....

BEFORE ME, the undersigned authority, personally appeared ....., who, being by me duly sworn, deposed as follows:

"My name is ..... I am over 18 years of age, of sound mind, with personal knowledge of the following facts, and fully competent to testify.

I attest that the assertions contained in the accompanying motion are true and correct."

SUBSCRIBED and SWORN TO before me, this ..... day of .....

NOTARY PUBLIC, State of [state name]

Notary's printed name: .....

My commission expires: .....

The motion must be supported by the affidavit of the moving party or the moving party's attorney setting forth a concise statement of the facts upon which the claim for relief is based.

Subd. 6. **Motion affidavit of mailing form.** The moving party shall complete an affidavit of mailing the motion to the court and to the respondent in substantially the following form:

State of Minnesota

County of .....

....., the moving party, being duly sworn, on oath, deposes and says that on the .... day of ....., ....., the moving party mailed the motion to the court and the respondent by placing a true and correct copy of the motion in an envelope addressed to them as shown by certified United States mail at ....., Minnesota.

Subscribed and sworn to before me this .... day of ....., .....

Subd. 7. **Response form.** The person listed as [the secured party in] [filing] the record for which the moving party has requested review may respond to the motion and accompanying materials to request an actual hearing within 20 days from the mailing by certified United States mail by the moving party. The form for use by the person listed as [the secured party in] [filing] the record in question to respond to the motion for judicial review must be in substantially the following form:

In Re: A Purported Financing Statement in the district court of ..... County, Minnesota, Against [Name of person who filed the financing statement]

RESPONSE TO MOTION FOR JUDICIAL REVIEW OF A FINANCING STATEMENT FILED UNDER THE UNIFORM COMMERCIAL CODE - SECURED TRANSACTIONS

..... (name) files this response to a motion requesting a judicial determination of the effectiveness of a financing statement or other record filed in the manner provided by sections 336.9-501 to 336.9-531 of the Uniform Commercial Code - Secured Transactions in the office of the ..... (filing office and location) and in support of the motion provides as follows:

I.

..... (name), the respondent, is the person listed as [the secured party in] [filing] the record for which review has been requested by the moving party.

II.

On ..... (date), in the exercise of the filing officer's official duties as ..... (filing officer's position), the filing officer received and filed or recorded the financing statement or other record, a copy which is attached, that purports to [perfect a security interest or agricultural lien against] [amend or terminate a record filed by] [be for a purpose outside of the Uniform Commercial Code - Secured Transactions as to] the moving party.

III.

Respondent states that the financing statement or other record is not fraudulent or otherwise improper and that this court should not declare the financing statement or other record ineffective.

IV.

Respondent attests that assertions in this response are true and correct.

V.

Respondent does not request the court to make a finding as to any underlying claim of the parties involved. Respondent further acknowledges that respondent may be subject to sanctions if this response is determined to be frivolous.

REQUEST FOR RELIEF

Respondent requests the court to review the attached documentation, to set a hearing for no later than five days after the date of this response or as soon after that as the court shall order and to enter an order finding that the financing statement or other record is not ineffective together with other findings as the court deems appropriate. Respondent may be contacted at:

Mailing Address: (required)

Telephone Number:

Facsimile Number: (either facsimile or e-mail contact is required)

E-Mail Address: (either facsimile or e-mail contact is required)

Respectfully submitted, .....

(Signature and typed name and address).

Subd. 8. **Response acknowledgment form.** The form for the certificate of acknowledgment must be substantially as follows:

AFFIDAVIT

THE STATE OF MINNESOTA COUNTY OF .....

BEFORE ME, the undersigned authority, personally appeared ....., who, being by me duly sworn, deposed as follows:

"My name is ..... I am over 18 years of age, of sound mind, with personal knowledge of the following facts, and fully competent to testify.

I attest that the assertions contained in the accompanying motion are true and correct."

SUBSCRIBED and SWORN TO before me, this ..... day of .....

NOTARY PUBLIC, State of [state name]

Notary's printed name: .....

My commission expires: .....

Subd. 9. **Response affidavit of mailing form.** Respondent shall submit the response by United States mail to both the court and the moving party, and also by either e-mail or facsimile as provided by the moving party. The respondent shall complete an affidavit of mailing the response to the court and to the moving party in substantially the following form:

State of Minnesota

County of .....

....., being the responding party, being duly sworn, on oath, deposes and says that on the .... day of ....., ....., respondent mailed the response to court and the moving party by placing a true and correct copy of the response in an envelope addressed to them as shown depositing the same with postage prepaid, in the United States Mail at ....., Minnesota.

Subscribed and sworn to before me this .... day of ....., .....

Subd. 10. **Hearing.** (a) If a hearing is timely requested, the court shall hold that hearing within five days after the mailing of the response by the respondent or as soon after that as ordered by the court. After the hearing, the court shall enter appropriate findings of fact and conclusions of law regarding the financing statement or other record filed in the manner provided by sections 336.9-501 to 336.9-531 of the Uniform Commercial Code.

(b) If a hearing request under subdivision 7 is not received by the court by the 20th day following the mailing of the original motion, the court's finding may be made solely on a review of the documentation attached to the motion and without hearing any testimonial evidence. After that review, which must be conducted no later than five days after the 20-day period has expired, the court shall enter appropriate findings of fact and conclusions of law as provided in subdivision 11 regarding the financing statement or other record filed in the manner provided by sections 336.9-501 to 336.9-531 of the Uniform Commercial Code.

(c) A copy of the findings of fact and conclusions of law must be sent to the moving party, the respondent, and the person who filed the financing statement or other record at the address listed in the motion or response of each person within seven days of the date that the findings of fact and conclusions of law are issued by the court.

(d) In all cases, the moving party shall file or record an attested copy of the findings of fact and conclusions of law in the filing office in the appropriate class of records in which the original financing statement or other record was filed or recorded. The filing officer shall not collect a filing fee for filing a court's finding of fact and conclusion of law as provided in this section except as specifically directed by the court in its findings and conclusions.

Subd. 11. **Order form; no hearing.** The findings of fact and conclusion of law for an expedited review where no hearing has been requested must be in substantially the following form:

MISCELLANEOUS DOCKET No. ....

In Re: A Purported Financing Statement or Other Record in the district court of  
..... County, Minnesota, Against [Name of person who filed financing statement]

Judicial Finding of Fact and Conclusion of Law Regarding a Financing Statement  
or Other Record Filed in the manner provided by sections 336.9-501 to 336.9-531  
of the Uniform Commercial Code - Secured Transactions

On the (number) day of (month), (year), in the above entitled and numbered cause, this court reviewed a motion, verified by affidavit, of (name) and the documentation attached. The respondent did not respond within the required 20-day period. No testimony was taken from any party, nor was there any notice of the court's review, the court having made the determination that a decision could be made solely on review of the documentation as provided in Minnesota Statutes, section 545.05.

The court finds as follows (only an item or subitem checked and initialed is a valid court ruling):

[.] The documentation attached to the motion IS filed or recorded with the authorization of the obligor, person named as debtor, or owner of collateral described or indicated in the financing statement or other record, or by consent of an agent, fiduciary, or other representative of that person, or with the authorization of the secured party of record in the case of an amendment or termination, and IS a legally valid financing statement or other record under the Uniform Commercial Code - Secured Transactions law of this state.

[.] The documentation attached to the motion IS NOT filed or recorded with the authorization of the obligor, person named as debtor, or owner of collateral described or indicated in the documentation, or by consent of an agent, fiduciary, or other representative of that person, or with the authorization of the secured party of record in the case of an amendment or termination and, IS NOT a legally valid financing statement or other record under the Uniform Commercial Code - Secured Transactions law of this state.

[..] The documentation attached to the motion IS filed to perfect an agricultural lien or for a purpose outside of the Uniform Commercial Code - Secured Transactions and there IS statutory or other legal authority therefor.

[..] The documentation attached to the motion purports to perfect an agricultural lien or for a purpose outside of the Uniform Commercial Code - Secured Transactions, and there IS NOT statutory or other legal authority therefor.

[..] This court makes no finding as to any underlying claims of the parties involved and expressly limits its findings of fact and conclusions of law to the review of a ministerial act. The filing officer shall remove the subject financing statement or other record so that the record is not reflected in or obtained as a result of any search, standard or otherwise, conducted of those records, but shall retain them and these findings of fact and conclusions of law in the filing office for the duration of the period for which they would have otherwise been filed.

SIGNED ON THIS THE ..... DAY of .....

..... District Judge

..... District

..... County, Minnesota

Subd. 12. **Hearing determination.** If a determination is made after a hearing, the court may award the prevailing party all costs related to the entire review, including, but not limited to, filing fees, attorney fees, administrative costs, and other costs.

Subd. 13. **Subsequent motion.** If the moving party files a subsequent motion under this section against a person filing a financing statement or other record that is reviewed under this section and found to be legally valid under the Uniform Commercial Code - Secured Transactions law of this state or under other statutory or legal authority, the court may, in addition to assessing costs, order other equitable relief against the moving party or enter other sanctions against the moving party.

Subd. 14. **Judicial officers.** The chief judge of a district court may order that any or all proceedings under this section be conducted and heard by other judicial officers of that district court.

**History:** 2006 c 260 art 7 s 11; 2009 c 98 s 29-35

**514.99 NONCONSENSUAL COMMON LAW LIENS.**

Subdivision 1. **Definitions.** (a) "Public official or employee" means:

(1) an elected or appointed official or an employee of a state; a department, agency, or public instrumentality of a state; or a political subdivision of a state; or

(2) an employee of the federal government or a federal agency as defined for purposes of the Federal Tort Claims Act, United States Code, title 28, section 2671.

(b) "Lien" means an encumbrance on property as security for the payment of debt. "Lien" does not include a nonconsensual common law lien.

(c) "Nonconsensual common law lien" means a purported lien that:

(1) is not provided for by a specific state or federal statute;

(2) is not consented to by the owner of the property affected; and

(3) is not a court-imposed equitable or constructive lien. For purposes of this clause, "court" means a federal district court, Minnesota district court, or the Minnesota Tax Court.

Subd. 2. **No duty to accept nonconsensual common law liens; notice of invalid lien.**

(a) No person has a duty to accept for filing or recording a claim of nonconsensual common law lien unless:

(1) the claim is accompanied by a specific order from a court of competent jurisdiction authorizing the filing of the lien;

(2) the lien statement is accompanied by an affidavit of personal service or service by certified mail of notice of the proposed lien on the subject of the lien; and

(3) the lien statement includes the mailing address of the lien claimant.

(b) No recording officer, recording office, or governmental entity is liable for the acceptance or rejection for filing or recording of a claim of nonconsensual common law lien or a notice of invalid lien.

Subd. 3. **Petition for release of nonconsensual common law lien.** (a) A person having an interest in real or personal property subject to a recorded claim of a nonconsensual common law lien, who believes the claim of lien is invalid, may petition the district court of the county in which the claim of lien has been recorded for an order, which may be granted ex parte, directing the lien claimant to appear before the court at a time no earlier than six nor later than 21 days following the date of service of the petition and order on the lien claimant, and show cause, if any, why the claim of lien should not be held invalid. The petition must state the grounds upon

which relief is requested and must be supported by the affidavit of the petitioner or petitioner's attorney setting forth a concise statement of the facts upon which the petition is based. The clerk of the court shall assign a case number on the miscellaneous docket to the petition. No filing fee is required. The proceeding must be expedited, and the Rules of Civil Procedure need not apply.

(b) The order to show cause must be served upon the lien claimant by personal service or by mailing copies of the petition and order to the lien claimant at the claimant's last known address or any other address determined by the court to be likely to give actual notice, or as the court may determine is appropriate, including by publication. If service is by mail, service is deemed complete three days after mailing. The envelopes must bear the return address of the sender. If service is allowed by publication, it must be made at least once a week for not less than two consecutive weeks in a newspaper of general circulation in the county in which the claim of lien has been recorded as designated by the court, with a copy of the last notice mailed first class, postage prepaid to the lien claimant.

(c) The order to show cause must clearly state that if the lien claimant fails to appear at the time and place noted, the claimed lien shall be stricken and released and that the lien claimant may be ordered to pay actual damages and the costs incurred by the petitioner, including reasonable attorney fees.

(d) If, following a hearing on the matter, the court determines that the claimed lien is invalid, the court shall issue an order striking and releasing the claim of lien and shall award actual damages, costs, and reasonable attorney fees to the petitioner to be paid by the lien claimant. If the court determines that the claim of lien is valid, the court shall issue an order so stating and may award costs and reasonable attorney fees to the lien claimant to be paid by the petitioner.

**Subd. 4. Liens against public officials and employees.** A claim of lien against a public official or employee based on the performance or nonperformance of that official's or employee's duties is invalid unless accompanied by a specific order from a court of competent jurisdiction authorizing the filing of the lien or unless a specific statute authorizes the filing of the lien.

**Subd. 5. Penalties.** A person who submits or is responsible for submitting for recording or filing any document purporting to create a nonconsensual common law lien against real property, knowing or having reason to know that the document is forged or groundless, contains a material misstatement or false claim, or is otherwise invalid, is liable to the owner of the real property for not less than \$5,000 or for actual damages caused thereby, whichever is greater, together with costs and reasonable attorney fees. Additional punitive damages may be assessed by the court. A grantee or other person purportedly benefited by a recorded document that creates a nonconsensual common law lien against real property and is forged or groundless, contains a

material misstatement or false claim, or is otherwise invalid, who willfully refuses to release the document or record upon request of the owner of the real property affected, is liable to the owner for the damages and attorney fees provided in this section.

Subd. 6. [Repealed, 2002 c 403 s 7]

**History:** *1999 c 170 s 1*

**609.7475 FRAUDULENT OR OTHERWISE IMPROPER FINANCING STATEMENTS.**

Subdivision 1. **Definition.** As used in this section, "record" has the meaning given in section 336.9-102.

Subd. 2. **Crime described.** A person who:

(1) knowingly causes to be presented for filing or promotes the filing of a record that:

(i) is not:

(A) related to a valid lien or security agreement; or

(B) filed pursuant to section 336.9-502(d); or

(ii) contains a forged signature or is based upon a document containing a forged signature; or

(2) presents for filing or causes to be presented for filing a record with the intent that it be used to harass or defraud any other person;

is guilty of a crime and may be sentenced as provided in subdivision 3.

Subd. 3. **Penalties.** (a) Except as provided in paragraph (b), a person who violates subdivision 2 is guilty of a gross misdemeanor.

(b) A person who violates subdivision 2 is guilty of a felony and may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both, if the person:

(1) commits the offense with intent to influence or otherwise tamper with a juror or a judicial proceeding or with intent to retaliate against a judicial officer, as defined in section 609.415, or a prosecutor, defense attorney, or officer of the court, because of that person's performance of official duties in connection with a judicial proceeding; or

(2) commits the offense after having been previously convicted of a violation of this section.

Subd. 4. **Venue.** A violation of this section may be prosecuted in either the county of residence of the individual listed as debtor or the county in which the filing is made.

**History:** 2006 c 260 art 7 s 13

RCW 60.70.030

No duty to accept filing of common law lien — Filing of a notice of invalid lien.

(1) No person has a duty to accept for filing or recording any claim of lien unless the lien is authorized by statute or imposed by a court having jurisdiction over property affected by the lien, nor does any person have a duty to reject for filing or recording any claim of lien, except as provided in subsection (2) of this section.

(2) No person shall be obligated to accept for filing any claim of lien against a federal, state, or local official or employee based on the performance or nonperformance of that official's or employee's duties unless accompanied by a specific order from a court of competent jurisdiction authorizing the filing of such lien.

(3) If a claim of lien as described in subsection (2) of this section has been accepted for filing, the recording officer shall accept for filing a notice of invalid lien signed and submitted by the assistant United States attorney representing the federal agency of which the individual is an official or employee; the assistant attorney general representing the state agency, board, commission, department, or institution of higher education of which the individual is an official or employee; or the attorney representing the school district, political subdivision, or unit of local government of this state of which the individual is an official or employee. A copy of the notice of invalid lien shall be mailed by the attorney to the person who filed the claim of lien at his or her last known address. No recording officer or county shall be liable for the acceptance for filing of a claim of lien as described in subsection (2) of this section, nor for the acceptance for filing of a notice of invalid lien pursuant to this subsection.

[1995 c 19 § 4; 1986 c 181 § 3.]

RCW 60.70.060

Petition for order directing common law lien claimant to appear before court — Service of process — Filing fee — Costs and attorneys' fees.

(1) Any person whose real or personal property is subject to a recorded claim of common law lien who believes the claim of lien is invalid, may petition the superior court of the county in which the claim of lien has been recorded for an order, which may be granted ex parte, directing the lien claimant to appear before the court at a time no earlier than six nor later than twenty-one days following the date of service of the petition and order on the lien claimant, and show cause, if any, why the claim of lien should not be stricken and other relief provided for by this section should not be granted. The petition shall state the grounds upon which relief is requested, and shall be supported by the affidavit of the petitioner or his or her attorney setting forth a concise statement of the facts upon which the motion is based. The order shall be served upon the lien claimant by personal service, or, where the court determines that service by mail is likely to give actual notice, the court may order that service be made by any person over eighteen years of age, who is competent to be a witness, other than a party, by mailing copies of the petition and order to the lien claimant at his or her last known address or any other address determined by the court to be appropriate. Two copies shall be mailed, postage prepaid, one by ordinary first-class mail and the other by a form of mail requiring a signed receipt showing when and to whom it was delivered. The envelopes must bear the return address of the sender.

(2) The order shall clearly state that if the lien claimant fails to appear at the time and place noted, the claim of lien shall be stricken and released and that the lien claimant shall be ordered to pay the costs incurred by the petitioner, including reasonable attorneys' fees.

(3) The clerk of the court shall assign a cause number to the petition and obtain from the petitioner a filing fee pursuant to RCW 36.18.012.

(4) If, following a hearing on the matter, the court determines that the claim of lien is invalid, the court shall issue an order striking and releasing the claim of lien and awarding costs and reasonable attorneys' fees to the petitioner to be paid by the lien claimant. If the court determines that the claim of lien is valid, the court shall issue an order so stating and may award costs and reasonable attorneys' fees to the lien claimant to be paid by the petitioner.

[2006 c 192 § 4; 1995 c 19 § 2.]