

# Bogus Filing Task Force

Final Recommendations:

IACA Conference - 2006

# Background

- Task Force formed in 2003
- Work Product presented at 2004 IACA Conference
- Some Suggestions Made at 2005 IACA Conference
- Final Version contained in your conference materials

# Impetus for Task Force

- Many “Harassment” and “Straw Man” filings attempted to be filed every year
- Many Secretaries of State view themselves as protectors of the integrity of the public record
- In a number of states this had become a “political” issue
- Some belief that RA9 did not go far enough to address this issue
- States were adopting non uniform amendments to RA9

# The Truth About RA9

- Drafters **did** consider this issue
- It was believed that the “Authority to File” principles, in conjunction with “Correction Statement” and “Damages Provisions” were adequate
- Several bodies of state law outside RA9 already address these issues
- Non uniform state variations to RA9 is not a good idea

# Non Uniform Rejection Provisions:

## Examples of State Variations within §9-516

- Oregon:
  - “In the case of a record presented for filing at the filing office the record on its face reveals, based on factors such as whether the debtor and the secured party are the same person or whether the collateral described is within the scope of this chapter, that the record is being filed for a purpose other than a transaction that is within the scope of this chapter.”
- North Carolina:
  - “In the case of a record presented for filing at the Department of the Secretary of State, the Secretary of State determines that the record is not created pursuant to this Chapter or is otherwise intended for an improper purpose, such as to hinder, harass, or otherwise wrongfully interfere with any person.”

# Non Uniform Rejection Provisions:

## Example of Another State Variation Type

- Texas:
  - “If the secretary of state believes in good faith that a document filed with the secretary of state to create a lien is fraudulent, the secretary of state shall: (1) request the assistance of the attorney general to determine whether the document is fraudulent before filing or recording the document; (2) request that the prospective filer provide to the secretary of state additional documentation supporting the existence of the lien, such as a contract or other document that contains the alleged debtor or obligor's signature; and (3) forward any additional documentation received to the attorney general.” [Added by Acts 2005, 79th Leg., ch. 407, § 2, eff. Sept. 1, 2005. (§ 405.021, Texas Government Code)]

# Project Charter

- Contents:
  - Context
  - Reasons for Task Force
  - Objectives
  - Work Product
  - Factors
  - Assumptions

# Charter Documents

- Principles for Solutions of Bogus Filings
- Expedited Judicial Process - Harassment
- Criminal Penalty – Harassment and Strawman
- Civil Penalty - Harassment
- Civil Penalty – Strawman



# Court Ordered Removals

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

**“...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...”**

# What Should the Filing Officer Do?

- Record the court order as an amendment (“COA”)
- Change the financing statement status to “Expunged” as a result of COA filing
- Do not reflect the record in a search by debtor name
- Maintain access to history by file number only search
- Notify bulk data purchasers to take action consistent with the filing office based on the new amendment filing type

# Next Steps

- Final IACA adoption of Task Force recommendations
- Review/Re-evaluate past IACA resolutions on this issue (next slide)
  - IACA Liason to NCUSSL?
- Make recommendations to NASS
- Obtain NASS adoption
- Determine whether IACA should retain a supervisory role for future developments in this area

# IACA Resolutions: 2004 - 2005

- **Resolution to add an Additional Section to RA9:**
  - IACA's Secured Transaction Section resolves to recommend to NCCUSL/PEB to adopt additional language in Section 9-625 (h) of RA 9 that reads: "Notwithstanding any provisions in this Article, the state may provide any additional civil and criminal remedies, penalties and procedures against a person that files a record that the person is not entitled to file under Section 9-509 (a)." as recommended by the NASS/IACA Bogus Filing Task Force.
- **Resolution to change the UCC 5 Correction Statement:**
  - IACA's Secured Transaction Section resolves to recommend to NCCUSL/PEB to change the name of the Correction Statement to Inaccurate or Wrongfully Filed Record Statement and that if NCCUSL/PEB agrees to change the name; the name can be changed on the UCC-5 form without additional authorization from the membership of IACA.
  - Be it further resolved, that IACA's Secured Transaction Section resolves to amend the existing statement on the UCC-5 form to read: "The filing of this Statement does not amend any UCC Record. This Statement is for informational purposes only."
- **Resolution on the Uniform Expedited Judicial Review Process Statute:**
  - IACA's Secured Transaction Section resolves to recommend to NCCUSL/PEB to adopt the Uniform Expedited Judicial Process statute for harassment type bogus filings as recommended and developed by the NASS/IACA Bogus Filing Task Force.
- **Resolution on the Uniform Criminal Penalties Statute:**
  - IACA's Secured Transaction Section resolves to recommend to NCCUSL/PEB to adopt the uniform criminal penalties statute for harassment and Strawman type bogus filings as recommended and developed by the NASS/IACA Bogus Filing Task Force.
- **Resolution on the Uniform Civil Penalties Statute for Harassment type bogus filings:**
  - IACA's Secured Transaction Section resolves to recommend to NCCUSL/PEB to adopt the uniform civil penalties statute for harassment type bogus filings as recommended and developed by the NASS/IACA Bogus Filing Task Force.
- **Resolution on the Uniform Civil Penalties Statute for Strawman type bogus filings:**
  - IACA's Secured Transaction Section resolves to recommend to NCCUSL/PEB to adopt the uniform civil penalties statute for Strawman type bogus filings as recommended and developed by the NASS/IACA Bogus Filing Task Force.