



TO: Joint Review Committee on UCC Article 9

FROM: Kelly Kopyt, International Association of Commercial Administrators

RE: UCC Article 9 Filing Issues

DATE: February 2, 2009

On behalf of the International Association of Commercial Administrators (IACA), I would like to provide the following information to assist the Joint Review Committee in their consideration of certain UCC Article 9 Filing Issues.

A. Transmitting Utilities, Lapse Period:

As written, 9-515(f) allows any filed financing statement, including amendments, against a transmitting utility debtor to reset its lapse period. Filing officers set the lapse period definitively at the time the initial financing statement is filed with their office. Due to system limitations, we are not equipped to alter a lapse period upon the filing of a financing statement amendment. None of our member jurisdictions currently have the operational ability to modify a lapse period at any time subsequent to the filing of an initial financing statement. If IACA's members were required to meet the expectations set forth in 9-515(f), we would be faced with excessive costs and administrative complications.

B. Name of Registered Organization; Definition of "Registered Organization"

IACA is concerned that some states maintain more than one database that could be referred to as a "public record," and there is also a concern as to what part or portion of a database constitutes the "public record." For example, in Massachusetts, the Corporations Division database is arguably our public record relative to organizations and business entities. In our database, a searcher is presented with a summary screen which illustrates general information about the entity. The general information sets forth the name of the entity, its organization date, registered office address, principal office address and a number of other summary details that, in some cases, have been data entered by filing office personnel. Reliance of a searcher upon this information may serve to be more detrimental than reliance upon the information in a filing office's good standing or legal existence certificate. An additional definition of the "public organic record" as 9-102(a)(67)(A) would clarify that only the organizing documents and any associated amendments or restatements shall specify the organization name to be relied upon as the correct debtor name. A simple typographical error on the summary screen could mislead the public to an incorrect registered organization name. Additionally, IACA believes that the public organic record should be available to the public for inspection and copying. This request for a defined public organic record, in turn, requests amendment to 9-102(a)(70), 9-503(a)(1) and the addition of a new 9-102(a)(67)(A).

C. Application of 9-503(a) to debtor that is both trust and registered organization:

IACA requested that 9-503(a)(1) be amended to reflect the change to the public organic record definition. We asked that business trusts be considered as registered organizations on the recommendation of the review committee with which we were working at the time. The subsequent revision to 9-503(a)(3) is consistent with IACA's original request.

D. Correction Statements:

IACA proposes to amend 9-518(a) to allow a filer, debtor and/or secured party to file a correction statement with respect to an indexed record. The correction statement, or Claim Concerning Inaccurate or Wrongfully Filed Record, has not yet presented an undue burden on the filing office and this amendment will not introduce a burden for a number of reasons. First, since the statements are merely informational and have no effect on the filed financing statements, filing offices have been lenient with its submitters. Most offices have accepted correction statements from secured parties for years and see this as an issue of housekeeping. Second, the number of filed correction statements is minimal in comparison to filed financing statements. In many cases, it amounts to less than one percent of the office's total filed financing statements. Unfortunately, there is no way to calculate the number of secured parties that have been deterred from filing a correction, however, we do not expect that number to be so substantial that it makes the total number of filed corrections more than negligible.

Despite the effectiveness of the correction statement on a filed financing statement, it serves a purpose in placing searchers on notice of some inconsistency. In turn, this builds confidence among financiers in the lending community. Inevitably, mistakes are made on filed records. More often than not, it is the secured party's mistake, not the debtor. The need for the correction statement is magnified by the filing officer's use of the "check digit" routine. Filing officers only began to "check," or verify, the validity of an initial financing statement number on records submitted for filing after Revised Article 9 went into effect. Prior to the use of this check digit routine, it wasn't uncommon for a record to be attached to the wrong initial financing statement. A secured party may transpose the numbers of the financing statement and unintentionally associate a termination with the wrong filing. These occurrences have become less common, but they still do arise. The fact is, filing officers have been accepting the correction statement from a secured party in order to place the public on notice of these inconsistencies. It can be argued that these filings are ineffective and IACA shouldn't be so concerned about rectifying these situations. This may be true; however, it doesn't help us to resolve the inconsistency on the filing officer's record.

E. Official Forms:

This topic is IACA's highest priority. Concern about the forms, as set forth in 9-521, will soon lead to a rush of non-uniform legislation as jurisdictions prefer to altogether remove the forms from statute rather than continue with inconsistency. Soon after the initial implementation of Article 9, NCCUSL encouraged IACA to update the UCC forms. However, the inconsistency between the uniform form set forth in 9-521 and the IACA Recommended UCC Forms cannot represent what the drafters originally intended. A survey of the IACA membership at our May 2008 conference showed that an overwhelming majority of our members have the 1998 version of the uniform form set forth in their state statutes (9-521), but they encourage the use of the IACA

Recommended UCC Forms through filing officer practices. Although one of the main reasons for the inconsistency is the presence of the social security number (SSN) box it is not IACA's only concern. For example on the UCC1, the organizational identification number requested in 1g is inapplicable in many states. The search report request check box in 7 is an inconvenience for the filing office and, in many cases, it is not correctly accommodated. Many states require a separate UCC11 request form so the parameters of the search request may be accurately communicated. Others will conduct the search based upon the check box, but the results will not include the filing that was just submitted. On the UCC3, filing offices are faced with confusion regarding box 7. An amendment to party information may add a debtor or secured party, however, the added information may not be complete from 7a through 7g. Depending upon whether the amendment is a change, addition or deletion, some required information may be missing and the filing office must statutorily accept the filing. The instructions on the face of the form do not clearly identify which fields are required. Undeniably, the filing officers are enduring significant pressure to remove SSNs from the public record and it remains in the forefront. Some states, like Ohio, faced litigation and succumbed to public pressure by shutting down all access to their databases while they attempt to redact SSNs from their records. Some members of the UCC community may prefer to keep the SSNs on the filings to help identify the proper debtor, but the reality for the filing officer is that publication of an SSN will only lead to undue burdens, negative publicity and potential litigation. Recently, Congress was reviewing a bill that placed the liability for publication of SSNs squarely upon the filing office.

Last year, NCCUSL and the PEB recommended that our best course of action in addressing our concerns would be to pursue a safe harbor for the IACA Recommended UCC Forms. Therefore, the recommendation in our request of December 11, 2007, sets forth a statement that the filing office may not refuse to accept a written record "...in a form approved by the office [nor may it refuse to accept a written record in the most recent form approved for nationwide use by IACA]..." Frankly, IACA thinks this recommendation may only cause more problems if it removes a uniform form and simply states an IACA safe harbor. It may cause more states to institute a state approved form, thereby leading to greater non-uniformity. IACA wants the lending community to be able to obtain a UCC form from IACA's website, www.iaca.org, and have the form be accepted when present to any state's filing office. Many of our members direct their filers to this website in order to obtain forms and we will continue to encourage this. We ask that the Joint Review Committee consider inserting a new form based upon the IACA Recommended UCC Forms and IACA's other concerns.

F. Name of Individual Debtor:

The filing office is entering the debtor name into the database exactly as it is presented on the financing statement. In turn, if our standard search logic doesn't return the financing statement and it doesn't meet the requirements of 9-503(a), it may be deemed seriously misleading and therefore ineffective. This has motivated a few of our member jurisdictions to take matters into their own hands in filing non-uniform legislation. At our conference in May 2008, we reviewed the legislation in Texas, Nebraska, Tennessee and others. We identified the shortcomings in Nebraska and Tennessee and asked our membership to refrain from making any additional legislative changes before the Joint Review Committee had an opportunity to decide upon this issue further. Texas may have found a workable solution, however, they have initiated a bit of a slippery slope. When one state enacts non-uniform legislation, it is only a matter of time before numerous others will follow. IACA advocates for the standardization of information requirements and search results in secured transaction registries and this type of non-uniform legislation makes us a bit uneasy. Time is of the essence in determining a more certain rule. In order to allow for greater uniformity, the IACA Secured Transaction Section wishes to present

the review committee's proposed changes to its membership at the next annual meeting, in May 2009, in Denver, Colorado. This will afford our membership sufficient time to present the changes to their respective legislative bodies, thereby allowing the IACA membership to implement the changes at relatively the same time.