

Model Administrative Rules Committee Update

Model Administrative Rules to Accompany the Uniform Law Commission's
Hip-Pocket Amendment on Fraudulent Filings

Committee Members: Paul Hodnefield (Corporation Service Company); Robert Lindsey (VA); Darrell Pierce (Dykema Gossett PLLC); Despina Shields (National Corporate Research, Ltd.); Mike Smith (GA); Marissa Soto-Ortiz (MA); Katie Zvolanek (OH)

Uniform Law Commission Hip-Pocket Amendment Summary

- Includes a criminal penalty, that is outside the UCC
- Provides a statutory process for administrative filing office review of UCC filings
 - Affidavit Filed by identified Debtor
 - Termination statement filed by filing office → notice sent to Secured Party
 - Secured Party has set time to seek reinstatement before Termination becomes effective. If Secured Party requests, office performs expedited review
 - At any time, Secured Party may commence an action against the office in the appropriate court.
 - If review determines filing was legitimate, reinstatement follows.

Uniform Law Commission Hip-Pocket Amendment Summary (continued)

- Concept of Trusted Filer
 - The procedure for when the filing is made by a trusted filer is slightly different.
 - If a Debtor files an affidavit claiming a trusted filer filed a fraudulent record, an expedited administrative review will be performed, after communicating to the Secured Party that the affidavit has been filed.
 - Termination statement is not filed until after an expedited review determines that the record was not authorized to be filed. Termination statement is effective immediately.
 - The remedy for the Secured Party is to commence a court action.
 - A Trusted Filer is a person that:
 - Regularly files with the office and has provided current contact information sufficient to establish the person's identity using criteria established by the filing office; or
 - Satisfies either of the following conditions:
 - The office has issued the person credentials for access to online filing services; or
 - The person has established a prepaid or direct debit account for payment of filing fees, regardless of whether the account is used in a particular transaction.

Uniform Law Commission Hip-Pocket Amendment Summary (continued)

- Each jurisdiction must individually adopt the Hip Pocket Amendment to supplement Article 9. Variations will likely occur when individual filing offices adopt the amendment.
- To date, the following states have adopted a version of the HPA:
 - Illinois
 - Kentucky
 - Mississippi
 - Nebraska
 - Utah
 - West Virginia

Goals of the Model Administrative Rules to accompany the Hip-Pocket Amendment

- Provide more guidance to the filing offices for those jurisdictions that choose to enact the Hip-Pocket Amendment
- Develop standardized procedures for carrying out the duties that are contained within the Hip-Pocket Amendment
- Develop standardized forms for filers and filing offices

Model Administrative Rules to accompany the Hip-Pocket Amendment

- 19 Rules that follow along with the HPA and provide additional guidance for the filing offices
- Provides for methods of submitting forms, procedures for sending notices, and how things will be posted in the UCC information management system

Forms to Accompany the Hip-Pocket Amendment

- UCC Filing Office Termination or Reinstatement (UCC3FT)
 - To be used by the filing office
 - Allows the office to select which action it is being used for – Termination (effective 20 days after date of filing), Notice of Action for Reinstatement, or Reinstatement.
- UCC Affidavit of Wrongful Filing (UCC5AF)
 - To be used by a person named as a debtor who believe the filing was made with the intent to harass or defraud.
 - Must include the financing statement number and be notarized.
- Notice of Filing Office Termination
 - Model letter for the filing office to send to the Secured Party of record after an Affidavit of Wrongful Filing is received.

Questions or Comments?