



TO: National Association of Secretaries of State

FROM: Kelly Kopyt, International Association of Commercial Administrators

RE: "Bogus" Filings - UCC Article 9-513A Revision

DATE: January 22, 2010

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On behalf of the International Association of Commercial Administrators (IACA), I would like to provide the following information to inform the National Association of Secretaries of State (NASS) of the Article 9 Joint Review Committee's proposed Article 9-513A, on the topic of bogus filings. As presented, IACA does not support the draft and we ask NASS to consider its position.

The National Conference of Commissioners on Uniform State Laws (NCCUSL) established the joint ALI/ULC committee to draft specific revisions of UCC Article 9 addressing previously identified issues. According to NCCUSL, the committee intended to address ambiguities discovered in existing statutory language where substantial problems arose in application of the current statutory provisions. Additionally, the committee is also considering statutory revision in areas where significant judicial decisions or non-uniform amendments could be addressed. The committee presented a draft for initial consideration at the July 2009 ULC Annual Meeting and is expected to present its act for final approval in July 2010.

The committee's current draft includes a new section 9-513A, Termination of Wrongfully Filed Record; Reinstatement, which intends to provide an administrative remedy for "bogus" financing statements. At the September 2009 drafting session, IACA asked the committee to remove this section from the Article 9 draft. Instead, IACA requests that the committee rely on the Final Report and Recommendations from the NASS/IACA Joint Task Force. Where states have adopted the recommendations of our task force by means of a separate statute, we do not find it appropriate to address "bogus" filings in Article 9.

As drafted, there are a number of substantive differences between the NASS/IACA task force recommendations and proposed 9-513A. For example, 9-513A applies to "government employees" and intends to narrow the application of the section to only those employees, elected or appointed officials that are the target of a harassment filing. Although the committee intends to narrow the application, "government employee" can be interpreted quite broadly. Additionally, the draft makes no mention of a remedy for the problems caused by strawman filings. Moreover, the 9-513A draft places a new, excessive burden on the filing offices. As drafted, the filing office shall bear the burden of filing a termination statement after the government employee has identified himself or herself as a wrongful debtor. Subsequently, the filing office shall be required to send

notice of termination by certified mail, return receipt requested, to the secured party address on the “bogus” financing statement. The filing office should not be asked to take on additional expenses during the current economic times.

Rather than confront each of the inconsistencies between the NASS/IACA task force recommendation and the 9-513A draft, IACA argues that “bogus” filings are not appropriately addressed within the confines of Article 9. We continue to urge the drafting committee to refer jurisdictions in need of an administrative remedy for “bogus” financing statements to the 2006 NASS/IACA recommendations. No further statutory revision is necessary. Although this draft may be a hip pocket amendment, the current draft stands before a handful of current legislative sessions and may lead to greater non-uniformity.