

Topic: Pre-relationship UCCs

Question By: Mike Smith

Jurisdiction: Georgia

Date: November 1, 2013

Jurisdiction	Question(s)
Alabama	
Alaska	We have never seen this in Alaska.
Arizona	
Arkansas	
California	California has never seen this.
Colorado	
Connecticut	
Delaware	
District of Columbia	
Florida	
Georgia	
Hawaii	
Idaho	Idaho has not seen this.
Illinois	
Indiana	IN has not seen this filing type/request.
Iowa	
Kansas	
Kentucky	<p>I have not encountered such filing in Kentucky.</p> <p>Under the UCC laws, I would not believe that a filing should be made until a security agreement has been put in place indicating the security interest. However, as a filing office and not being required to determine the effectiveness of a filing, if the required form and fee are submitted and meet your office filing requirements, I would say you would have to accept and put on file. Kentucky does not reject regarding collateral or lack of a collateral listing, therefore we would accept the filing and place on record. Again, as long as our requirements are met per the form and fee.</p>
Louisiana	Louisiana has not seen this.
Maine	
Maryland	
Massachusetts	

Michigan	
Minnesota	
Mississippi	
Missouri	Missouri receives very few of these types of filings. We have the customer file an amendment and attach the subordination filing to it.
Montana	Montana has not experienced this situation.
Nebraska	
Nevada	Nevada has not seen this.
New Hampshire	
New Jersey	
New Mexico	
New York	
North Carolina	
North Dakota	
Ohio	<p>I have never heard of such a thing. In fact, I think 9-509 would preclude this, legally. It states that a person may file a financing statement if the debtor authorizes the filing in an authenticated record (usually a signed, written security agreement), or if the debtor acquires collateral in which such a record exists.</p> <p>I know it isn't the filing office's concern, but really, a UCC filed prior to the existence of a relationship (and therefore an authorization by the debtor to the filing) is useless because it is not properly filed.</p> <p>But no – I have never heard of this in Ohio – that's the short answer.</p>
Oklahoma	
Oregon	
Pennsylvania	
Rhode Island	Rhode Island has never encountered this type of filing request.
South Carolina	
South Dakota	
Tennessee	
Texas	Not aware of this type of filing in Texas.
Utah	Utah has not seen this.
Vermont	
Virginia	
Washington	
West Virginia	
Wisconsin	Wisconsin has not encountered this in recent history.
Wyoming	

Additional Comments:

From David Wanetik (First American Title Insurance Company): If the filing was not authorized by the debtor, it will not be effective. If authorized at a later date, see the new Official Comment to section 9-322 which will back date authorization and effectiveness.

From Darrell Pierce (Dykema Gossett): It is important that we distinguish between two possible situations here. It would be unusual and inappropriate for a secured party to "pre-file" on a debtor with whom it had *no* relationship. It would be an unauthorized filing that is both legally ineffective (as David points out) and it would justify a debtor action under 9-625 for statutory and actual damages. On the other hand, it is very common for a secured party to pre-file even though the final security agreement is not yet in place. Sometimes this is done with express authority to pre-file (for example, granted by the debtor in a commitment letter or term sheet) but in many cases there is only an informal understanding. As Dave observes, when the security agreement is complete, the pre-filing will become authorized with full retroactive effect, so this process allows the secured party to file and search prior to closing to confirm priority before funds are advanced. If closing does not occur, the secured party will usually terminate before the filing creates a problem for the debtor.

Response from Mike Smith (Georgia): Thanks, Darrell. I am familiar with the second scenario and agree that it is legitimate. However, in the scenario presented to me, the SP would be "fishing" or "prospecting" which has consequences under 9-625, as you point out.

Full Text of Original Email:

I had an inquiry from a customer asking whether I have encountered a "Pre-relationship" UCC. Apparently this UCC purports to establish a relationship between the SP and debtor prior any agreement being in place. In other words, the potential SP is "prospecting" and wants to be established before any other potential SP.

I have never heard of, or encountered, such a filing.

Has anyone ever heard of such a filing?