



UCC Article 9 for Filing Officers

International Association of Commercial Administrators Training Program

DyKEMA



CORPORATION SERVICE COMPANY[®]

UCC Article 9: Background and Concepts

UCC Article 9 Background

- **Uniform Commercial Code Article 9**
 - *Law governing security interests in personal property.*
 - A security interest is a consensual lien that arises by contract. Also, sales of rights to payment (factoring).
 - *States began to adopt Article 9 in the late 1950s.*
 - *Significantly revised in 2001.*
- **What happens?**
 - *Debtor enters into agreement with secured party granting the security interest, secured party gives value and debtor has rights in the collateral*
 - This allows secured party to repossess and foreclose on the collateral after default by the debtor
 - Secured party gets priority over debtor's other creditors to collateral and proceeds

UCC Article 9 Background

- **Role of the Filing System**
 - *Because Article 9 allows parties to adjust other creditors' rights by private agreement, fairness requires public notice*
 - *To achieve priority, a security interest must be “perfected”*
 - Filing a “financing statement” is by far the most common method to perfect
 - Other methods include possession and special actions for certain types of collateral (vehicles, bank accounts, IP)
- **UCC and Real Property**
 - *Unlike recording systems, Article 9 filing system does not track title or all interests*
 - *There is an overlap between the UCC and real property law with respect to fixtures, timber to be cut and as-extracted minerals.*
 - Priority depends on filing in real estate records

Essential UCC Filing System Concepts

- **UCC is a just a Notice Filing System**
 - *UCC records do not establish ownership or rights.*
 - *Financing statements are not signed and are not enforceable documents*
 - *Financing statement merely notice that a security interest may exist.*
- **So, Searchers Must Conduct Further Inquiry**
 - *Article 9, case law and commentary all indicate that searchers must contact the parties involved to learn the full state of affairs.*
- **UCC Places the Burden on Filer to Get it Right**
 - *Must satisfy all the content requirements.*
 - *Filing office is not responsible for legal sufficiency, just existence of legible content in required fields and indexing*

Role of the Filing Office

- **The Filing Office is a Trusted Repository**
 - *Relied upon by searchers to identify or confirm the absence of security interests perfected by filing*
 - *Key responsibilities are:*
 - Maintaining a stable database
 - Proper indexing
 - Maintain search logic that yields consistent results
- **Responsibilities are Purely Ministerial**
 - *Article 9 policy is to remove judgment and discretion from the filing office's duties.*
 - *Filers and searchers are responsible to protect themselves while the filing office remains neutral*

Role of the Filing Office

- **Article 9 Has a Bias in Favor of Filing**
 - *Filing office may only refuse to accept a record for a reason specified in statute.*
 - *“Perfect tender” of filing and fee constitutes filing, so rejection for improper reason results in a perfected security interest hidden from searchers and potential tort liability for filing office.*
- **Searching: UCC Article 9 Open Drawer Policy**
 - *Filing office must provide the entire record history to searchers.*
 - *Searchers are responsible for interpretation.*
- **“Do No Harm”**
 - *Because filing office cannot know in fact what is going on, filing office maintains debtor names and secured parties of record even if amendments indicate changes*

UCC Forms

- **National Safe Harbor Forms: UCC § 9-521**
 - *Must be accepted by filing offices in all states.*
 - *Current form revision date is 04/20/11.*
- **Types**
 - *UCC1 Financing Statement*
 - *UCC1AD Financing Statement Addendum*
 - *UCC3 Amendment*
 - *UCC3AD Amendment Addendum*
 - *Non-statutory forms for search requests, filing office corrections and bogus filings*
- **State-Approved Forms**
 - *Some states have created and accept their own forms in addition to (not instead of) the § 9-521 forms.*
- **Signatures**
 - *UCC forms do not require signatures of any party. The absence of a signature is not a reason for rejection.*

UCC Record Intake

Rejection & Acceptance of UCC Records

- **Article 9 Policy:**
 - *Legal sufficiency is the filer's problem.*
 - *Records that provide required content must be accepted regardless of accuracy.*
 - *Review process is counter-intuitive and very different from review of real estate instruments.*
- **Reasons for Rejection**
 - *The **only** reasons for which a filing office may refuse to accept a record are set forth in § 9-516(b).*
 - *A filing office may only reject for a reason set forth in § 9-516(b). See § 9-520(a).*
 - *General rule is that a filing office may only reject a record if it is unable to index it.*

UCC 9-516(b) Reasons to Refuse Filing

- **Record is communicated by method or medium not authorized by filing office**
 - *This is not a “catch-all.”*
- **Proper fee is not tendered**
- **Filing office cannot index because:**
 - *no debtor name provided on initial financing statement;*
 - *no file number for initial financing statement provided on amendment, or number provided relates to a lapsed FS;*
 - *record does not identify an individual debtor’s surname; or*
 - *no legal description of real estate provided for FS to be filed in real estate records.*
- **No name and address for secured party on initial FS or amendment that adds the secured party**

UCC 9-516(b) Reasons to Refuse Filing

- **No address for debtor on initial FS or amendment that adds the debtor, or failure to indicate whether debtor is individual or organization**
 - *Separate boxes/fields for names indicate debtor status.*
- **No name or mailing address for indicated assignee**
- **Continuation statement not filed within 6-month window prior to lapse date**
- **Filing office is unable to read or decipher required information**
 - *This is also not a catch-all.*

Rejection & Acceptance of UCC Records

- **Common Rejection Errors:**
 - *Imposing requirements not found in statute.*
 - *Prior filing of termination or continuation statement.*
 - *Lack of signatures.*
 - *Collateral not of a type filed at the county.*
- **Notice of Rejection**
 - *After rejecting a UCC record, the filing office must provide the submitter with a reason for the rejection.*
 - *Notice must include the time and date when the record would have been accepted if not rejected.*
 - *General rule is that the filing office must perform this duty within 2 business days.*
 - *If filer convinces filing office that rejection was improper, filing office must indicate filing was effective at original filing time.*

UCC Record Content Requirements

- **Debtor and Secured Party Name**
 - *Correctness of the debtor or secured party name does not affect filing office duties.*
 - *Typos are filer's problem.*
- **Debtor and Secured Party Address**
 - *A mailing address is required for each party. However, no particular format is specified by statute.*
 - *Address is to assist searchers and is not required for legal sufficiency.*
- **Indication of the Collateral**
 - *Contents of the collateral field do not affect filing office duties and must be ignored.*
 - *Omission of the collateral is not grounds for rejection!*

Additional County Content Requirements

- **Description of the Affected Real Property**
 - *Required by many counties for indexing purposes.*
- **Indication that Financing Statement Covers Type of Collateral**
 - *Can be made in collateral statement or using checkbox on the Addendum form.*
 - *Failure to use checkbox is not grounds for rejection.*
- **Name of the Record Owner**
 - *Required for counties to index record if debtor name is not found in the grantor-grantee index.*

Information Not of Concern for Filing Office

- **Alternative Designations**
 - *Have no effect on filing office duties with respect to the record.*
- **Debtor and Transaction Indications**
 - *These are relevant only for setting lapse dates, if applicable.*
- **Descriptive or Explanatory Information**
 - *The contents of the collateral field or any attached schedules, exhibits or other documents have not effect on the filing office duties.*
- **Content of Attachments**
 - *Except in states where filing office must review under bogus filing law or privacy law*

Duration and Effectiveness of UCC Records

- **General Rule:**

- *Financing statement is effective for 5 years from the date of filing.*
 - March 1 substitutes for February 29 per Model Administrative Rules

- **Manufactured Home or Public-Finance Indication**

- *Financing statement is effective for 30 years.*
- *Several states omitted one or both exceptions.*

- **Transmitting Utility Indication**

- *Financing statement is effective until terminated with respect to all secured parties of record.*
- *Filing office cannot determine effectiveness of termination statements so record should never be purged unless requested by debtor and secured party(ies).*

UCC3 Amendments

2.

TERMINATION:

Termination Statement

- **Effect of Filing by Authorized Person**
 - *Financing statement ceases to be effective. See § 9-513(d).*
 - *Effectiveness is outside filing office responsibility, as filing office cannot establish the filer's authority.*
- **Filing Office Indexing**
 - *Termination statements should be indexed as other amendments.*
 - *Termination statements have no effect on the lapse date.*
 - *Filing office must accept multiple termination statements.*
 - *Amendments are effective only with respect to the authorizing secured party(ies). UCC §9-510.*
- **Amendment After Termination Statement Filed**
 - *Filing office has no grounds to reject an amendment, including a continuation statement, after a termination statement has been filed under the Do No Harm rule.*

UCC-3 Assignment

- **Assigns Right to Amend the Financing Statement**
 - A UCC-3 assignment **does not** assign the security interest!
- **Effect of UCC3 Assignment:**
 - Adds the assignee as secured party of record.
 - Assignor remains a secured party of record. See § 9-511(c).
 - If desired, assignor may file an amendment to delete itself as a secured party.
 - But assignor remains a secured party of record as far as filing office is concerned under the Do No Harm rule.

Continuation Statement

- **Time for Continuation Statement Filing:**
 - *Filing office must reject a continuation statement submitted more than 6 months prior to the lapse date.*
 - *Filing office must reject a continuation statement submitted any time after the lapse date.*
 - *A continuation statement submitted outside the 6-month window is not effective, even if the filing office indexes the record and resets the lapse date.*
- **Effect of Timely Filing of Continuation Statement**
 - *Effectiveness of the financing statement is extended for an additional 5-year period beginning on the date when the record would have ceased to be effective if no continuation had been filed.*

Continuation Statement

- **Multiple Continuations:**

- *Filing office must accept all continuation statements submitted for the record within 6 months prior to the lapse date.*
- *Only the first continuation resets the lapse date.*

- **Fixture Filings**

- *Common misconception is that fixture filings do not lapse (similar to a transmitting utility UCC).*
- *In fact, all fixture filings (other than transmitting utility records and mortgages that are effective as fixture filings) are effective for 5 years and must be continued to remain effective beyond that time.*

Party Amendment

- **Party Add**

- *Adds the party information set forth in Item 7 to the financing statement.*
- *Filer must indicate whether the party is a debtor or secured party.*

- **Party Change**

- *If new party name is provided in Item 7, filing office must add that name as a debtor or secured party, based on the filer's indication in Item 5.*

- **Party Delete**

- *Removes the party described in Item 6 from the scope of the financing statement.*
- *Filing office may not delete name from index until 1 year after the financing statement has lapsed.*

Secured Party Authorizing the Amendment

- **Item 9 Does NOT Actually Indicate Authorization**
 - *A filer can put any name they want in Item 9 regardless of whether the party authorized the amendment.*
 - *Filing office cannot possibly determine whether the party named in Item 9 authorized the amendment.*
- **Item 9 is NOT Required for Most Amendments**
 - *The correctness or omission of a secured party name in Item 9 is NOT a permitted reason for rejection under § 9-516(b).*
 - *Authorizing party name may be different from secured party names of record.*
- **Item 9 is Required for an Assignment**
 - *Record must provide the name of the Assignor.*

Indexing, Record Maintenance, Searches and Bulk Sales

Indexing – General Requirements

- **Initial Financing Statements**

- *Must be indexed by debtor name.*
- *Debtor name must be entered into the index exactly as it appears in the record.*
- *Record must be assigned a file number, book & page or equivalent.*

- **Amendments**

- *Record must be assigned a unique file number, book & page or equivalent.*
- *Must be linked to the initial financing statement by file number.*
- *Amendment to add new debtor name or change existing debtor to name not of record must be indexed in the same manner as an initial financing statement.*

Indexing – Challenges

- **Long Debtor Names**

- *Must be truncated if too large for the debtor name field.*

- **Special Characters**

- *Assign wild card or other process?*

- Current majority rule is to require filer to provide only acceptable characters, but this poses a problem for filers and searchers who cannot provide the debtor name as it really is to the filing office
 - 9-503 standard for debtor name cannot be met, and
 - 9-506 standard cannot be tested because it requires filing office to search under debtor's correct name.

Maintenance & Destruction of Records

- **Retention Period**

- *Filing office must retain the record in the UCC index until at least 1 year after the record has lapsed with respect to all secured parties of record.*
- *The filing of a termination statement has no effect on the filing office data retention duties.*

- **Destruction of Records**

- *Filing office may immediately destroy written UCC records if it maintains an electronic image of the record.*
- *After retention period, filing office may remove items from UCC index.*
- *Archival records are maintained at filing office's discretion.*

Information from Filing Office

- **Filing Acknowledgment**

- *Written Forms: If requested, the filing office must provide the submitter with an image of the record that shows the file number, and date and time of filing, or return a copy of the filed record provided by filer with the filing information.*
- *Electronic Records: Filing office must provide a communication that includes the information in the record, file number, file date and time.*

- **Searches**

- *Filing office must make available to any person that requests it a search of a particular debtor name that includes the information in each record plus the file date and time for each record.*

- **Bulk Data/Copies**

- *Filing office must make copies and/or data available at least weekly.*

General Operations and Search Logic

Statutory Requirements

- **Caveats:**
 - *Some of the following rules were not uniformly enacted.*
 - *We will not address specific filing office practices and procedures.*
- **Filing Offices Must Adopt Administrative Rules**
 - *UCC §9-526 requires rules to be adopted and published.*
 - *Harmonization generally and statutory requirement to consult with other filing officers and IACA's Model Administrative Rules.*
- **Other Items:**
 - *Time for Performance: Filing office must perform its intake and notice duties within 2 business days. UCC §9-523(e).*
 - *Delay is excused for “force majeure” events. UCC §9-524.*
 - *Duty to Report. UCC §9-527.*

Search Logic

- **Search logic should be disclosed in filing offices rules**
 - *MARs proposes a strict, limited search logic that forces filers to be accurate but lowers transaction costs for searchers*
- **Ideally, searches produce discrete results**
- **In any event, standard search logic needs to produce consistent results**
 - *Under 9-506, a debtor name that is not perfect is nevertheless legally effective if the relevant financing statement is found in a search under the correct debtor name using the filing office's standard search logic*
- **Non-standard search logic may be offered too, but should be distinguished from the standard logic**



Q&A

Thank You!

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