



# ***UCC Article 9 for Filing Officers Course 301***

*International Association of Commercial Administrators Training Program*

**DyKEMA**



# **UCC Article 9: Quick Review**

# 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*
- **Repository for UCC Financing Statements**
  - *As a neutral third party, government is in the best position to provide a stable repository for notices filed under the UCC.*
  - *UCC records are maintained by the designated government unit for commercial use, not for the benefit of government.*

# 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.*



# 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*
  - *Filing office concern is with the maintenance, not the effectiveness of records.*



# 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.*
  - *All amendments linked to initial financing statement by file number*
  - *Searchers are responsible for interpretation.*



# Key Operating Principles

- **Intake: “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.*
- *Amendments accepted until lapse, even if apparent termination by or deletion of authorizing party*
  - Once a secured party of record, always a secured party of record

- **Searches: Maintain Consistent Results**

- *Legal sufficiency of debtor name is based on practical search results, so standard search logic outcomes should not change over time*
  - Legal result is unclear



**The stories you are  
about to see are true.  
The names have been  
changed to protect the  
innocent.**



# Scenario #1

## Effect of Termination Statement on Filing Office

# Practice at Issue

**The East Dakota Secretary of State rejects any amendment submitted after the filing of a termination statement.**

# Common Sense Rationale

**Terminated Financing Statement  
is No Longer Effective**

**No Need to File Additional  
Records**

# Applicable Authority

- **Article 9 Drafting Policy**

- *Filing office cannot possibly know whether a termination statement is effective.*
- *Therefore, filing office must accept amendments after the filing of a termination statement.*

- **Statutory Authorities**

- *Prior filing of a termination statement is not a reason for rejection under § 9-516(b).*
- *A filing office may only reject a record for a reason set forth in § 9-516(b). See § 9-520(a).*

# Unintended Consequences

- **Threatens Underlying Security Interest**
  - *Secured party may not be able to take actions required by statute to remain perfected (continuation, debtor name amendment, etc.) if termination statement was unauthorized.*
- **Threatens Integrity of the Searchable Index**
  - *Does not reflect actual filing history of a record.*
  - *Searchers cannot obtain information relevant to the search, which should be available under the Article 9 Open Drawer Policy.*

## Scenario #2

# Maintenance of Records

## Practice at Issue

**The central filing office for the State of Bliss marks debtor names as “inactive” so they cannot be searched following an amendment to change or delete the debtor.**

# Common Sense Rationale

**“Old” debtor name is no longer relevant.**

**Removal of old name from searchable index does no harm.**



# Applicable Authority

- **Article 9 Drafting Policy**

- *Open Drawer so that those who search the records can see the entire filing history related to the record.*

- **Statutory Authorities**

- *The filing office may not remove a debtor's name from the index until one year after the effectiveness the record lapses with respect to all secured parties of record. UCC § 9-519(g).*
- *This rule applies even if the filing office accepts an amendment purporting to delete or modify the name of a debtor or terminate the effectiveness of a financing statement. UCC § 9-519 Comment 6.*



# Unintended Consequences

- **Searchers Cannot Locate Effective Records**
  - *Records filed under prior name remain effective except against after-acquired collateral.*
  - *Searcher may not be aware of name change.*
  - *Unauthorized amendment to delete debtor.*
- **Threatens Integrity of the Searchable Index**
  - *Does not reflect actual filing history of a record.*
  - *Searchers cannot obtain information relevant to the search, which should be available under the Article 9 Open Drawer Policy.*

## Scenario #3

# Collateral Practices

## Practice at Issue

**The State of Palm Beach filing office allows UCC e-filers to submit only 400 characters of collateral online.**

**However, filers can separately submit a PDF collateral statement by email and it will be appended to the record.**

# Common Sense Rationale

**Seems like a balanced approach.**

**What could possibly go wrong?**

# Applicable Authority

- **Statutory Authorities**

- *A financing statement is sufficient only if it... indicates the collateral covered by the financing statement. UCC § 9-502(a)(3).*
- *Priority ranks from the earlier time of filing or perfection. UCC § 9-522(a).*

# Unintended Consequences

- **Recently Filed Records Cannot Be Trusted**

- *Collateral may later change without amendment.*
- *Audit trail of appended collateral may not be provided to searchers.*

- **Priority May Be Difficult to Determine**

- *May delay prevent funding or even prevent commercial transactions for businesses located in the State of Palm Beach.*
- *Increases risks and uncertainties for lenders.*
- *Increases cost of credit for Palm Beach residents.*

## Scenario #4

# Secured Party Authorizing an Amendment



## Practice at Issue

**The Catalina Secretary of State will reject an amendment if the secured party authorizing the amendment in Item 9 does not exactly match a current secured party of record.**

# Common Sense Rationale

**If the name isn't the name of a secured party of record, they don't have authority to amend the record.**

# Applicable Authority

- **Statutory Authorities**

- *The content of Item 9 on a UCC3 is not a reason for rejection under § 9-516(b).*
- *A filing office may only reject a record for a reason set forth in § 9-516(b). See § 9-520(a).*
- *“Secured party of Record” is a matter of law determined by § 9-511, not by what the filing office chooses to index.*

# Unintended Consequences

- **Party Authorized by Law Cannot File UCC3**

- *Application of other law may result in a person succeeding to the powers of the secured party of record. See § 9-511, Official Comment 3.*
- *Filing office is ill-equipped to determine a party's legal status.*

- **Harms Debtors**

- *Debtor may be unable to clear a UCC financing statement, thus preventing the debtor from obtaining additional financing.*

## Scenario #5

# Additional Filing Requirements

## Practice at Issue

**State of New Guernsey rejects financing statements unless the filer checks a box to “attest” that all the collateral is within the scope of Article 9. Non-uniform New Guernsey law does require the statement as part of the collateral.**

# Common Sense Rationale

**If such a statement is required by statute, we're just making it easier to do so.**

# Applicable Authority

- **Statutory Authorities**

- *A filing office is not expected to make legal judgments and is not permitted to impose additional conditions or requirements. See § 9-520 Official Comment 2.*
- *Nothing in the NG law requires the use of a check box to make the statement, nor does NG's already non-uniform § 9-516(b) permit a filing office to reject for this reason.*



# Unintended Consequences

- **New Guernsey Filing Office is Practicing Law**
  - *Specific language required to comply with non-uniform provision is not set forth in statute.*
  - *Secretary of state is holding out that its language is legally sufficiency.*
- **Substantially Increases Transaction Costs**
  - *High rejection rate unnecessarily increases the amount of personnel time and expenses to file in New Guernsey.*
  - *Costs, risks and uncertainties all affect the cost and availability of credit for New Guernsey residents.*

## Scenario #6

# Flagrant Redaction

## Practice at Issue

**The central filing office for the State of Minnehaha redacts “naughty” character strings from e-filing acknowledgment copies.**

**“STURDY & ASSOCIATES” becomes  
“SXXXXY & XXXOCIATES”**

# Common Sense Rationale

**Hey! We're trying to run  
a family-friendly registry  
here.**



# Applicable Authority

- **Statutory Authorities**

- *If a person files a record other than a written record (e-files), the filing office shall communicate to the person an acknowledgement that provides **the information in the record.** (emphasis added) See § 9-523(b)(1).*

# Unintended Consequences

- **Delays Funding For Debtors**
  - *Uncertainty over filed name causes parties to wait until debtor name actually submitted can be proven.*
- **Violates Law**
  - *Filing office must return the information in the record for an electronically filed record.*

## Scenario #7

# Continuation Timing

## Practice at Issue

**A continuation statement arrived by mail on a day the Franklin Secretary of State's office is closed, which happens to be the lapse date.**

**The filing office processed the record the next business day and backdates it to the lapse date.**



# Common Sense Rationale

**It arrived on the lapse date so there's no harm in backdating it to then.**

# Applicable Authority

- **Statutory Authorities**

- *The effectiveness of a financing statement lapses a continuation is filed before the lapse. § 9-515(c).*
- *Subsection (d): A continuation may only be filed within 6 months prior to the expiration date. § 9-515(d).*
- *The filing office must reject a continuation statement filed after the lapse date. § 9-516(b)(3)(B)(ii).*

- **Administrative Rules**

- *A record delivered when the filing office is not open for business will have a filing time of the close of business on the next business day. MARS Rule 101.3*



# Unintended Consequences

- **False Sense of Security**
  - *Record has lapsed but secured party believes it remains effective due to indexing and lapse date reset.*
  - *Filing office does not control effectiveness of record based on decision to file or reject.*
- **Increases Transaction Costs for Searchers**
  - *Requires more research time and expense to determine what records are effective and which are simply “active” in the database.*

## Scenario #8

# Rejection Practices

## Practice at Issue

**The UCC filing office for the State of Douglass rejects financing statements if multiple boxes are checked in Items 6a, 6b or 7 to indicate type of transaction or alternative designations.**

# Common Sense Rationale

**The record can't be all of these things at the same time.**

# Applicable Authority

- **Statutory Authorities**

- *The checking of multiple boxes in Items 6a, 6b, and 7 is not a reason for rejection under § 9-516(b).*
- *A filing office may only reject a record for a reason set forth in § 9-516(b). See § 9-520(a).*
- *Only relevance to filing office is for setting the lapse date in compliance with § 9-515.*

# Unintended Consequences

- **Searchers Lack Information**
  - *Item 6a helps the filing office set the lapse date, but the best practice is to set the longest indicated date to be safe.*
  - *The check boxes in Items 6b and 7 are solely for the benefit of those who search the records. It is not submitted for the benefit of the filing office.*
- **May Cost Secured Party Its Priority**
  - *Lack of priority can be as bad as being unperfected.*
  - *Wrongful rejection may be subordinated to another party that relied on the absence of the record.*



## Scenario #9

# Rejection Practices

## Practice at Issue

**The East Carolina UCC central filing office will reject a record if an organization name and address is provided in Item 1, but just an organization name is provided in Item 2 or Item 10.**

# Common Sense Rationale

**Failure to provide the debtor's mailing address is a reason for rejection under § 9-516(b)(5).**

# Applicable Authority

- **Statutory Authorities**

- *Filing does not occur with respect to a financing statement that fails to provide a mailing address for the debtor § 9-516(b)(5)(A).*
- *A filing office shall reject a record for a reason set forth in § 9-516(b). See § 9-520(a).*
- *If a record provides information that relates to more than one debtor, this part applies to each debtor separately. § 9-520(d) (Emphasis added).*

# Unintended Consequences

- **Wrongful Rejection for First Debtor**
  - *The filing office may reject with respect to one debtor but accept with respect to the other. § 9-520 Official Comment 5.*
  - *Results in incomplete index.*
- **Leaves Secured Party at Risk**
  - *Wrongful rejection may be subordinated to another party that relied on the absence of the record.*
  - *Increases risk, cost and uncertainty, which is passed on to the debtor.*



**Q&A**

Thank You!

DyKEMA



## Contact Information:



### ***Paul Hodnefield***

*Associate General Counsel  
Corporation Service Company  
2345 Rice St., Ste. 230  
Roseville, MN 55113*

*800-927-9801, ext. 61730*

*Cell: 952-649-1555*

*phodnefi@cscinfo.com*



### ***Darrell W. Pierce***

*Member  
Dykema Gossett PLLC  
2723 S. State St., Ste. 400  
Ann Arbor, MI 48103*

*734-214-7634*

*734-355-4452*

*dpierce@dykema.com*

