

UCC Article 9 for Filing Officers

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UCC Article 9: Background and Concepts

UCC Article 9 Background

- Uniform Commercial Code Article 9
 - Law governing security interests in personal property.
- Security Interest
 - Security interest is a consensual lien that arises by contract.
 - 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
- The Security Agreement
 - Contract that creates the security interest.
 - Enforceable like most contracts between the debtor and secured party.
 - What about third parties?

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.

UCC Record Sufficiency

- Legal Sufficiency requires only debtor name, secured party (or representative) name and indication of collateral
 - Debtor name must be accurate to protect searchers (within standard search logic “wobble room”) but otherwise easy for filers to perfect
 - Searchers are protected by debtor name rule: only one search needed in most cases
- Other information is required for filing, to instruct filing office, or to provide more information to searchers, but not for legal sufficiency

UCC Record Sufficiency

- Debtor address is to help searcher distinguish debtors, and secured party information is provided for UCC notices
 - Need not be accurate to perfect, but creates estoppel issue for UCC notices
 - Note: only debtor is entitled by law to information from secured party; there is no duty imposed on secured parties to respond to searchers
- Collateral need only be indicated and not specifically described
 - Filers can use “all assets” or “certain [asset type]”

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.
 - 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 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.
 - See §9 -516(c) and official comments.

Rejection & Acceptance of UCC Records

- Common Rejection Errors:
 - Imposing requirements not found in statute.
 - Prior filing of termination or continuation statement.
 - Lack of signatures (primarily a county issue).
 - 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 and other errors 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!

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 no 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, or at any time after the lapse date.
 - A continuation statement accepted outside the 6-month window is ineffective, even if the filing office 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.
- 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.

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.

Collateral Amendment

- Collateral Change: Added
 - The described collateral is covered by the UCC1.
- Collateral Change: Deleted
 - The described collateral is no longer covered by the UCC1
- Collateral Change: Restated
 - Replaces all prior collateral descriptions.
- Collateral Change: Assigned
 - This is not a collateral amendment. It relates to an assignment. The assignment box in Item 3 should also be checked.
- Effect
 - All collateral amendments should be indexed in the same way. It is up to those who search the records to interpret the record.

Secured Party Authorizing the Amendment

- Contents of Item 9 is NOT a Reason for Rejection!
 - 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 name(s) of record in many circumstances.
- 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 Required for an Assignment
 - Record must provide the name of the Assignor.
 - For other actions, Item 9 technically does not need to be completed.

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

- Time of Filing
 - What time to assign for records delivered by different methods?
 - Should be addressed by administrative rules for certainty.
- 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

Thank You!



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