ARTICLE 9 FILING BASICS

2015

Presented by

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THE ESSENTIALS OF FILING UCC FINANCING STATEMENTS

1) Overview & Essential UCC Concepts
   a) Filing Requirement Authorities
      i) UCC Article 9
         (1) Part 5 provides the requirements for a sufficient financing statement and the sufficiency of required record contents. In addition, Part 5 establishes the duties and powers of the filing office.
      ii) Model Administrative Rules
         (1) Created by the International Association of Commercial Administrators (“IACA”) to implement UCC Article 9.
            (a) Adopted in whole or in part by most states.
            (b) Also known as “MARS”.
         (2) MARS and links to state adoptions may be found at http://www.iaca.org/node/46.
   b) Nature of UCC Records
      i) The UCC is a notice filing system.
         (1) UCC records are not intended to provide all the details of a transaction, such as dollar amounts or terms and conditions.
         (2) Interested parties must conduct further inquiry to learn the full state of affairs. See § 9-502 cmt. 2.
   c) Nature of the UCC Computer Index & Search System
      i) The UCC filing office computer index and retrieval system is designed to operate without human judgment or discretion. Article 9 removes any discretion from the filing office to add reasons for rejection, see § 9-520 cmt. 2, or when indexing the record. See MARS Rule 401 (“data are entered into the UCC information management system exactly as provided in a UCC record, without regard to apparent errors”).
      ii) Sufficiency of a debtor name depends on whether it either strictly complies with the debtor name requirements of § 9-503(a) or, if not, whether a computer can match the name to the search term after application of the jurisdiction’s standard search logic. See § 9-506(b) and (c).
         (1) Computers merely match text strings. They do not read, comprehend or understand. Consequently, the standard for sufficiency of indexed data, primarily debtor names, is not based upon whether a human can read the name.
   d) Effectiveness of a UCC Financing Statement
      i) Record Sufficiency. The filer is solely responsible for the accuracy and, therefore, effectiveness of a filed record. The filing office cannot make a record effective or ineffective. The filer’s compliance with the statutory sufficiency and filing location requirements will determines effectiveness. Filing office errors are a risk to the searcher, not the filer. See § 9-517 cmt. 2 (“this section imposes the risk of filing-office error on those who search the files rather than on those who file”).
      ii) Authority. Even an otherwise sufficient UCC record is only effective to the extent it was filed by a person that may file it under § 9-509. In general, the debtor must authorize an initial financing statement, an amendment to add a debtor or an amendment to add collateral. All other UCC records must be authorized by the secured party of record.
e) Non-Uniform Filing Requirements
i) Non-uniform enactments of Article 9 or other laws of a state may impose additional filing requirements or prohibitions.

(1) Examples:
   (a) Financing statements filed in South Dakota must provide the individual debtor’s Social Security number. See, e.g., S.D. Codified Laws § 57A-9-502(a)(1).
   (b) Filing offices in Illinois will reject a record that indicates the debtor is a transmitting utility unless the debtor meets the statutory definition. See, e.g., § 810 ILCS 5/9-516(b)(3)(E).
   (c) The Florida Secured Transactions Registry requires that an assignment amendment indicate whether it is full or partial, despite specific prohibition on refusal of records for reasons not set forth in Fla. Stat. § 679.516 by Fla. Stat. § 679.520.
   (d) New Jersey law requires the financing statement to indicate that the collateral is within the scope of Article 9. N.J. Stat. Ann. § 12A:9-502(a)(3).

(2) Caution: the foregoing is by no means an exhaustive list of state non-uniform provisions. While the general Article 9 concepts and many filing requirements are uniform, there are enough deviations between states to create risk and traps for the unwary filer or searcher. Therefore, it is critical to check the applicable Article 9 statutes for non-uniform provisions before filing or searching in a particular state.

2) Preliminary Due Diligence
a) Determine Filing Location
   i) Law governing perfection and priority:
      (1) Law of the jurisdiction where the debtor is located governs perfection and priority of a security interest in the collateral. § 9-301(1).
   ii) Debtor’s location is determined under § 9-307 and is based on the type of debtor.
      (1) Registered Organization under state law.
         (a) A registered organization created under state law is located in the state where it was organized. § 9-307(e).
      (2) Registered organization under federal law.
         (a) Located in the state where the federal law designates. § 9-307(f)(1).
         (b) Located in the state where the entity designates if the law authorizes the entity to designate its location. § 9-307(f)(2).
            (i) Under the 2010 Amendments to UCC Article 9, an entity’s may designate its state of location by designating its main office, home office or other comparable office. See § 9-307(f)(2) as amended in 2010.
         (c) If neither of the preceding options apply, the entity is located in the District of Columbia. § 9-307(f)(3).
      (3) Individual.
         (a) An individual is located at his or her principal residence. § 9-307(b)(1).
      (4) Other organization.
         (a) Any other type of organization is located at its place of business (as defined in § 9-307(a) or, if it has more than one place of business, at its chief executive office. See § 9-307(b)(2) and (3).
Location rules only apply if the debtor is located in a jurisdiction whose law generally requires the public filing or registration of a security interest as a condition or result of the security interest obtaining priority over the rights of a lien creditor. See § 9-307(c).

(a) If the debtor’s location does not require filing or registration of a security interest, then the debtor is located in the District of Columbia.

(b) Examples:
   (i) Debtor is located in a foreign country:
       1. File in D.C.
       2. Perfect to the extent possible in the foreign country.
   (ii) Debtor is located within the jurisdiction of a sovereign Indian tribe:
       1. Perfect by filing in the manner specified by tribal code, if any.
       2. File in D.C.

(iii) Filing location within the state.
   (1) General rule: File in the central filing office of the jurisdiction where the debtor is located.
   (a) Central filing office within the state is determined by § 9-501(a)(2).

(2) State Exceptions:
   (a) Georgia
       (i) Georgia has no central filing office. All UCC records are filed with the superior court clerk of any county within the state. O.C.G.A. § 11-9-501(a)(2).
       (ii) The superior court clerks all enter the UCC data and images into a central searchable index maintained by the Georgia Superior Court Clerk’s Cooperative Authority (“GSCCCA”).
       (iii) A UCC record may be filed with any superior court clerk regardless of where the debtor or collateral are located within the state because a single search of the GSCCCA system will reveal all records filed within the state.

   (b) Louisiana
       (i) Louisiana has no central filing office. All UCC records are filed with the clerk of court (aka “parish clerk”) of any parish within the state. La. Rev.Stat. Ann. § 10:9-501(a)(4).
       (ii) A financing statement may be filed in Louisiana in the uniform commercial code records of the clerk of court in any parish without regard to the location of the debtor or the collateral within the state. See La. Rev.Stat. Ann. § 10:9-501 cmt. (b).
       (iii) All the parish UCC records are entered into a system maintained by the Louisiana Secretary of State. This allows state-wide searching through a central search system. However, unlike Georgia, the images are not uploaded to the system. Therefore, searchers need to retrieve the images of any disclosed records from the parish where the records were filed.

(3) Collateral Exceptions:
   (a) Real-Estate-Related Collateral
       (i) Types
           1. Fixtures
2. Timber to be Cut
3. Minerals to be Extracted

(b) Governing Law:
   (i) The law of the jurisdiction where the collateral is located governs perfection of a security interest in goods by filing a fixture filing. § 9-301(3).

(c) Filing Office:
   (i) The office designated for the filing or recording of a mortgage on the affected real property. § 9-501(a)(1).

b) Special Due Diligence for a Fixture Filing
   i) Description of the real property.
      (1) Article 9 generally requires that the description reasonably identify the property as provided in § 9-108. However, land record offices generally require the full legal description to ensure the record is correctly indexed and retrievable by the local search system. See § 9-502 cmt. 5. Many filing offices will refuse to accept the record without the full legal description.
   ii) Property identification number.
      (1) The “PIN” is often required by land record offices because they need to cross-reference all recorded records with the tax rolls.
   iii) Name of the record owner.
      (1) If the debtor does not have an interest of record, the record must provide the name of the record owner. § 9-502(b). This could occur where the debtor is a lessee and the lease has not been recorded or where the land is held in a trust and the debtor is a beneficiary.

3) The Debtor Name
   a) Purpose of the Debtor Name on a Financing Statement
      i) The debtor name is not provided on a financing statement to identify the debtor. The secured party, debtor and other interested parties already know who the debtor is. The purpose of the debtor name on a financing statement is solely to allow an interested party to retrieve the record on a search. The debtor name rules in Article 9 are designed to create consistent rules for retrieving records filed on a debtor, not to provide information to the searching party.
   b) Sufficiency of the Debtor Name
      i) Statutory Tests
         (1) § 9-503(a)
             (a) The debtor name must strictly comply with the requirements of § 9-503(a) or the financing statement is seriously misleading. See § 9-506(b). A seriously misleading financing statement is ineffective to perfect a security interest.
             (2) § 9-506(c)
                 (a) If the debtor name provided on a financing statement fails to sufficiently provide the name required by § 9-503(a), then the record may still be not seriously misleading if a search of the filing office records under the correct debtor name and using the filing office’s standard search logic would disclose the record.
                 (b) Most states use the Model Standard Search Logic created for the implementation of Revised Article 9. The Model Standard Search Logic,
which is set forth in MARS Rule 503, will disregard certain minor deviations in an organization debtor name, including:

(i) Spacing.
(ii) Punctuation.
(iii) Ending noise words, phrases or abbreviations that designate the entity type.
(iv) “The” at the beginning of the name.

(c) Nevertheless, “standard search logic” is whatever logic the particular filing office uses. There is no requirement that filing offices use the Model Standard Search Logic. See In Re Tyringham Holdings, Inc., 2006 Bankr. LEXIS 3332, (E.D. Va. December 1, 2006) (“The relevant standard is clearly no longer the diligent searcher's standard search logic nor a private search organization's standard search logic, but it is instead the filing office's standard search logic.”).

(d) Caution: Filing offices can and do change search logic. If a financing statement is perfected solely under § 9-506(c) because it fails to sufficiently provide the name of the debtor, ongoing perfection is at the mercy of the filing office search logic. Any change to the search logic could result in loss of perfection.

(3) Representative Case Law

(a) Host America Corporation v. Coastline Financial, Inc., 60 U.C.C. Rep. Serv. 2d. (D. Utah May 30, 2006) (omission of periods following initials in the debtor name made the financing statement seriously misleading where the correct name of the debtor included the periods and the Utah standard search logic did not disregard punctuation).

(b) In re: Receivables Purchasing Company, Inc., v. R & R Directional Drilling, L.L.C., 588 S.E.2d 831(Ga. App. 2003) (financing statement failed to sufficiently provide the name of the debtor because it included an inadvertent space and the filing office’s standard search logic failed to disclose the record on a search of the correct name).

(c) In Re Tyringham Holdings, Inc., 2006 Bankr. LEXIS 3332, (E.D. Va. December 1, 2006) (financing statement was seriously misleading where the secured party omitted “Inc.” from the debtor name and the filing office’s standard search logic did not disregard “Inc.” as an ending noise word).

ii) Debtor Name Requirements by Debtor Type

(1) Registered Organization

(a) The name of the organization exactly as set forth in the public organic record most recently filed with or issued by or enacted by the debtor’s jurisdiction of organization. See § 9-503(a)(1).

(b) See the new definition of “public organic record” in § 9-102(a)(68).

(2) Collateral is Being Administered by a Personal Representative of the Decedent

(a) The individual name of the decedent must be provided in the individual name fields. See § 9-503(a)(2).

(b) An indication that the collateral is being administered by a personal representative is also required by § 9-503(a)(2), but in a separate part of the financing statement, not the name field. The indication must be made by
checking the box in Item 5 of the financing statement form UCC1 or the electronic filing equivalent. If the indication is added to the debtor name field it will almost certainly make the financing statement seriously misleading.

(3) Collateral Held in Trust (that is not a registered organization)
(a) The name of the trust, if the organic record specifies a name (emphasis added). Otherwise, the financing statement must provide the name of the settlor. See § 9-503(a)(3)(A).
(i) Caution: the name of the trustee is not sufficient, even though the trustee is nearly always the debtor when collateral is held in a common law trust.
(b) In a separate part of the financing statement, an indication the collateral is held in a trust. § 9-503(a)(3)(B)(i). Use the check box in Item 5 of the financing statement form UCC1 to make this indication.
(c) If the name of the settlor is provided, the financing statement must provide additional information sufficient to distinguish the trust from other trusts having one or more of the same settlor(s). However, this information must be provided in a separate part of the financing statement, not the name field. See § 9-503(a)(3)(B)(ii).
(d) An indication that the debtor is a trust or trustee is also required by § 9-503(a)(3)(B). The filer should provide the indication by checking the appropriate box in Item 17 of the Addendum form UCC1AD or the electronic filing equivalent. The indication must never be provided in the debtor name field.

(4) Individual
(a) States that enacted § 9-503(a)(4) Legislative Alternative A.
(i) The financing statement must provide the name of the individual indicated on the person’s driver’s license or, if state law allows, identification card that is unexpired and issued by the state where the financing statement will be filed.
(ii) If the debtor lacks a driver’s license or ID card that satisfies the statute, then the financing statement must provide either:
   1. The individual name of the debtor, or
   2. The surname (last name) and first personal name (first name) of the debtor.
(b) States that enacted § 9-503(a)(4) Legislative Alternative B.
(i) The financing statement must provide either:
   1. The individual name of the debtor, or
   2. The surname (last name) and first personal name (first name) of the debtor.
   3. The name indicated on the person’s driver’s license or, if state law allows, identification card that is unexpired and issued by the state where the financing statement will be filed.

(5) Other Organizations
(a) This is a catch-all category. As with an individual, § 9-503(a)(5)(A) provides no guidance to help a filer determine the correct name of a debtor that does not fall within any other debtor type. Consequently, the filer must conduct
thorough due diligence to determine what name or names could be correct and file those name(s) as separate debtors.

(6) Unnamed Debtor
(a) If the debtor has no name, the financing statement must provide the names of the partners, members, associates or other persons that comprise the debtor, in a manner that each name provided would be sufficient if the person named were the debtor. § 9-503(a)(5)(B).

c) Providing the Debtor Name in the Financing Statement Name Fields
i) The filer must provide the debtor name in the field that corresponds to the type of name, not the type of debtor.
   (1) The name required by § 9-503(a)(2) when the collateral is being administered by a decedent’s personal representative. is an individual name. If, as frequently occurs, the filer provides the name in the organization debtor field, it becomes an organization name and is not sufficient.
   (2) If the collateral is held in a trust, the actual debtor is the trustee. Nevertheless, the name required for purposes of the financing statement is either the name of the trust, which is an organization, or the name of the settlor, which may be an individual or organization name.

ii) Never include additional information in the debtor name field. Any words that are not part of the name required by UCC § 9-503(a) will make the name seriously misleading.
   (1) Case Law
      (a) See e.g. In re: Jim Ross Tires, Inc., 2007 Bankr. LEXIS 2653 (S.D. Tex. Aug. 6, 2007) (financing statement was seriously misleading where the name field contained text in addition to the correct name of the debtor, because filing office rules do not modify the name during data entry and search logic will inevitably fail to disclose records with extra text).
      (b) See also In re: EDM Corporation, 2010 Bankr. LEXIS 1373 (8th Cir. 2010).

iii) Always provide the full debtor name.
   (1) Never abbreviate or truncate the name. See generally, Tyringham 2006 Bankr. LEXIS 3332 (omission of “Inc.” made the financing statement seriously misleading). See also, In Re Stewart, 2006 Bankr. LEXIS 3014 (D. Kan. Nov. 1, 2006)(financing statement that provided the debtor name as “Richard Stewart” was seriously misleading where the court determined the correct name was “Richard Morgan Stewart, IV”).

iv) Use Addendum Forms for Multiple Debtors
   (1) Financing Statement Addendum forms
      (a) UCC1AD
      (b) UCC1AP
   (2) Do not use attachments to provide additional debtor names. Most filing offices will not index debtor names listed on an attachment.
      (a) See In re Camtech Precision Manufacturing, Inc., 443 B.R. 190 (Bankr. S.D. Fla. Jan. 31, 2011)(financing statement was not effective with respect to two debtors where the filing office did not index the two names because the secured party provided the names on an attachment).

4) Additional Debtor Information
a) Debtor Address
   i) The financing statement must provide a mailing address for the debtor. § 9-516(b)(5)(A). However, the debtor’s mailing address is required only to avoid rejection by the filing office—not for sufficiency of the record. See § 9-502(a).
   ii) A mailing “address” is defined by MARS Rule 100.2 as a physical street address, route number, or PO Box number, plus the city, state and zip code. The term also includes what purports to be a mailing address outside the United States.
   iii) Errors in the debtor address will not make a financing statement seriously misleading. However, if the debtor’s mailing address is incorrect at the time the financing statement was filed, there is a risk that the security interest could be subordinated to a security interest of a person that gave value in reasonable reliance on the incorrect information. See § 9-338.

b) Debtor Organization Information
   i) Organization information is no longer required in the vast majority of states. 
      (1) Exceptions:
         (a) New York
         (b) Oklahoma
         (c) U.S. Virgin Islands
      (2) Information required for filing in Exception States:
         (a) a type of organization for the debtor;
         (b) a jurisdiction of organization for the debtor; or
         (c) an organizational identification number for the debtor or an indication that the debtor has none.
            (i) The “Org ID” is not the same as a tax identification number. The Org ID is the unique number issued by the state agency responsible for entity formation to track all of an entity’s records.
      (3) Organization information is not required for sufficiency of the record under § 9-502(a). It is only required to avoid rejection by the filing office under § 9-502(b)(5)(C). Nevertheless, errors in the debtor’s organization information have the potential to result in subordination of the security interest as provided in § 9-338.

5) Secured Party Name & Address
   a) Secured Party Name.
      i) General
         (1) The financing statement must provide the name of the secured party or a representative of the secured party. § 9-502(a)(2).
         (2) The financing statement need not indicate the representative capacity of the name provided in the secured party name field. § 9-503(d).
         (3) The secured party information is primarily to ensure the secured party receives notices to which it is entitled, such as a notice of purchase-money security interest in inventory under § 9-324(c). The information is not provided for the purpose of identifying the specific secured party to a searcher. See In re: Bonds Distributing Company Incorporated, 2002 U.S. App. LEXIS 14292 (4th Cir. 2002)(UCC financing statements exist to provide notice that a secured party exists).
      ii) Sufficiency
         (1) Secured party names are not held to the same standard for sufficiency as debtor names. Financing statements are indexed under the name of the debtor, not
secured party. Searches are not conducted under the secured party's name and no filing is required to maintain perfection following an assignment. Therefore, an error in the name of the secured party or its representative will not be seriously misleading. See § 9-506 cmt.2.

(a) See e.g. In re: American Consolidated Transportation Companies, Inc., 2010 Bankr. LEXIS 2360 (Bankr. N.D. Ill. 2010) (Because any error in the name of a secured party on a financing statement was not seriously misleading, the secured party’s financing statements were still effective to perfect the security interests in the debtor’s collateral).

(b) See also In re: Hergert., 275 B.R. 58 (Bankr. D. Ida. 2002) (the accuracy of a secured party's name is relevant only if a hypothetical creditor could somehow be materially led astray by an error in, or omission of, the secured party's name), citing In re Copper King Inn, Inc., 918 F.2d 1404 (9th Cir. 1990).

b) Secured Party Address.
   i) The financing statement must provide a mailing address for the secured party. § 9-516(b)(4). However, the mailing address requirement exists to avoid rejection by the filing office. The secured party’s address is not a requirement for sufficiency of the financing statement. See § 9-502(a).
   ii) A mailing “address” is defined by MARS Rule 100.2 as a physical street address, route number, or PO Box number, plus the city, state and zip code. The term also includes what purports to be a mailing address outside the United States.

6) Collateral Description
a) Overview
   i) The collateral description must reasonably indicate what is described. See § 9-108(a). This is often an easy threshold to meet. However, providing too vague of a description may not be sufficient. See, e.g., Fernandez, v. White Rose Food Co., 13 Misc. 3d 1204A (N.Y. Sup. Ct. Aug. 7, 2006) (collateral statement that merely provided an address was insufficient because it made no attempt to delineate any type of property covered by the financing statement).
   ii) § 9-108(b) offers a variety of methods the secured party can use to sufficiently describe the same collateral:
      (1) Specific Discription
      (2) Category
      (3) Type
      (4) Formula
      (5) Other Methods
b) Supergeneric Description:
   i) Financing statement can describe a security interest in substantially all of the debtor’s assets as “ALL ASSETS” or “ALL PERSONAL PROPERTY.” § 9-504(2).
   ii) A supergeneric description is not sufficient in the security agreement because the security agreement establishes the rights of the parties. In contrast, the financing statement is merely a notice and does not require the same level of detail.

c) Sufficiency
   i) Errors
      (1) Minor errors in serial numbers of equipment generally do not make a financing statement seriously misleading. See, e.g., Maxus Leasing Group v. Kobelco
America, Ltd., 2007 U.S. Dist. LEXIS 13312 (N.D.N.Y. Feb. 26, 2007)(a one-digit error in the serial number of a crane did not make the financing statement seriously misleading because a UCC search still would have provided inquiry notice of the security interest; the information at least provided a starting point for further investigation; and the record provided enough information to distinguish this collateral from other similar equipment).

ii) Attached Collateral Description

(1) Collateral described on external documents, such as the security agreement or lease, can be incorporated by reference.
(2) Caution: if the collateral statement references an external document, the referenced document must be attached. See, e.g., In Re: Lynch, 313 B.R. 798 (Bankr. W.D. Wis. Jul. 27, 2004)(financing statement that referenced the security agreement for the collateral description was not sufficient because it did not indicate the collateral as required by the state’s version of §9-502(a)(3)). See also In Re: Duusterhaus Fertilizer, Inc., 347 B.R. 646 (Bankr. C.D. Ill. Aug. 28, 2006)( “In Lieu” financing statement failed to satisfy the requirements of §9-502(a)(3) where the collateral statement provided the information required by §9-706, but did not indicate the collateral covered by the pre-effective-date financing statement that it referenced and the pre-effective-date financing statement was not attached).

7) Other Filing Issues

a) Filing Method
   i) Submission of Written Records.
      (1) Allows greater flexibility for attachments.
      (2) More costly and time consuming.
   ii) Electronic Filing.
      (1) Available with more than 40 state-level filing offices.
         (a) Electronic filing is now the only method permitted for filing with the Colorado Secretary of State. See 8 Colo. Code Regs. §1505-7, Dept. of State UCC Filing-Office Rule 103.
         (b) Other states may eventually mandate electronic filing of UCC records.
      (2) Speed and cost efficiency led to rapid early adoption by financial institutions.
      (3) Some states permit attachment of PDF schedules or exhibits.

b) Fixtures
   i) Generally:
      (1) A security interest in fixtures may be perfected by three different methods:
         (a) A financing statement that covers fixtures filed in the central filing office of the state where the debtor is located.
         (b) A “fixture filing,” as the term is defined in § 9-102(a)(40).
         (c) A record of mortgage, which is governed by real estate law and outside the scope of this program.
      (2) The requirements for filing on fixtures are governed by the general financing statement sufficiency rules in § 9-502(a).
   ii) UCC Fixture Filings Requirements:
      (1) Collateral types:
         (a) Fixtures
(b) Timber to be cut.
(c) Minerals to be extracted.

(2) A Fixture Filing must comply with § 9-502(a).
   (a) Name of the debtor.
   (b) Name of the secured party.
   (c) Indication of the collateral.

(3) Additional filing requirements in § 9-502(b):
   (a) Indication that the record covers the type of collateral.
   (b) Indication that it is to be filed in the real property records.
   (c) Sufficient legal description of the affected real property.
   (d) Name of the record owner – if debtor does not have an interest of record.

(4) Purpose of the additional real property information:
   (a) Real estate indexing systems often required land-related information to properly index a record. The UCC, therefore, specifies that fixture filings provide the additional information land record offices need to ensure the financing statement can be retrieved through a search.

(5) Providing the additional information:
   (a) Use the Addendum form UCC1AD to provide all the additional real estate information.
   (b) Caution: The additional information required by § 9-502(b) is necessary for sufficiency of the record. Omission of any § 9-502(b) information will likely make the record ineffective.

(c) The Search to Reflect
   i) Law firms may have a duty to conduct a post-filing search to reflect after filing a UCC record on behalf of a client.
      (1) See e.g. Antonis, v. Liberati, 821 A.2d 666 (Pa. 2003) (attorney found negligent for failure to ensure a mortgage was properly recorded where the filing office made an indexing error that allowed the debtor to sell property without disclosing the mortgage or paying the secured party).
   ii) Interpreting a Search to Reflect
      (1) Search discloses the financing statement
         (a) Interpretation:
            (i) Disclosure indicates the filing office has indexed the record and that the debtor name is at least sufficient at the point in time under § 9-506(c).
         (b) Response:
            (i) No action is required unless the debtor name fails to comply with § 9-506(c). In that case, the secured party should immediately amend the record to add the correct name. The search to reflect must be maintained in the secured party’s files to preserve evidence that the debtor name was sufficient at all times prior to the amendment.
      (2) Search fails to disclose the financing statement
         (a) Causes:
            (i) Incorrect debtor name.
            (ii) Filing office indexing error.
            (iii) Filing office never received the record.
         (b) Response:
(i) Filer should immediately take action to ensure the record is correctly filed by either submitting an amendment to add the correct debtor name or resubmitting the financing statement as appropriate.

(ii) If the filing office made an indexing error, the record is effective under § 9-517. Nevertheless, the secured party can avoid the risk of incurring legal fees at a later time by having the filing office correct the error immediately after filing.

d) Alternative Designations
i) The secured party may check the boxes in Item 7 of the financing statement form or its electronic equivalent use to use terms other than “debtor” and “secured party” as the parties in the transaction. See § 9-505(a).

(1) Checking an alternative designation in Item 7 is intended to allow the filer to make informational filings that might be necessary to comply with a non-Article 9 statute or treaty that may govern perfection.

ii) If a court determines that the filing of a financing statement was required, the filing with an alternative designation is sufficient to comply with the filing requirement. See § 9-505(b).

e) Other Checkboxes
i) Overview.

(1) In some cases, the financing statement must indicate the type of debtor or type of transaction.

ii) Debtor Checkboxes – Financing Statement Item 5

(1) The appropriate checkbox must be checked if the collateral is being administered by a personal representative of the decedent or is held in a trust. See § 9-503(a)(2) and (3). These are requirements for sufficiency of the financing statement. Failure to check one of the boxes may make the financing statement ineffective to perfect the security interest.

iii) Transaction Check Boxes – Financing Statement Item 6

(1) The boxes in Item 6 provide the indication necessary to obtain extended effectiveness under § 9-515(b) or (f). Failure to check the appropriate box will result in 5-year effectiveness for the financing statement instead of the 30-year period for public-finance and manufactured-home transactions, or effective until terminated duration permitted for transmitting utility financing statements.

(2) Caution: Many states did not adopt the extended effectiveness provisions for one or more types of transactions described in § 9-515.

f) Optional Filer Reference Data
i) This field on the financing statement is solely for use by the secured party to link the record with the correct file, matter or transaction.

ii) Caution: Some states redact numbers of 9 digits or longer in this field out of fear they could include the debtor’s tax ID or Social Security number.
Presenter Biography

Paul Hodnefield is Associate General Counsel for Corporation Service Company (“CSC”). In addition to his duties at CSC, he currently serves as Co-Chair of the ABA Joint Task Force on Filing Office Operations and Search Logic. Mr. Hodnefield is a Fellow of the American College of Commercial Finance Lawyers. He is also an active participant with the International Association of Commercial Administrators (IACA) Secured Transactions Section. Prior to joining CSC, Mr. Hodnefield served as an adjunct professor at the University of Minnesota law school, where he taught courses on public records and business ethics.

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Rev. 10192015