

Revised Article 9 Filing Guide for the Office of the State Secretary

Perfection by Filing

I. Where to File

Many types of security interests are perfected by filing a properly completed financing statement in the appropriate filing office.

If the collateral is listed “as extracted collateral” or timber to be cut, or if it is fixtures or goods to become fixtures, then the filing is made in the registry of deeds where a mortgage on real property would be recorded, or if the land is registered, then in the office of the district of the land court within which the real property is located. In all other cases, including transmitting utilities, the filing is made in the office of the state secretary.

It should be pointed out that under Revised Article 9, the law governing perfection of a non-possessory security interest is the jurisdiction where a debtor is located. One major change between former Article 9 and Revised Article 9 is the distinction between registered organizations and other types of business. A registered organization is an organization organized solely under the laws of a single state or the United States and as to which the state or United States must maintain a public record showing the organization to have been organized. Under Revised Article 9, a registered organization is located in its jurisdiction of organization. So, for example, if you have a corporation organized in Delaware but located in Massachusetts, its UCC filings will be made in the state of Delaware.

II. What to File

This section contains only the information required for filing in the office of the state secretary. Additional information is required for filings made in the registry of deeds or the land court.

Under Revised Article 9 a financing statement will be accepted for filing if:

- 1) it provides the name and mailing address of the debtor;

- 2) the name and address of the secured party or the secured party's representative;
- 3) indicates the collateral covered by the financing statement;
- 4) indicate whether the debtor is an individual or an organization; and
- 5) if the debtor is a registered organization, the financing statement must include the type of organization, the jurisdiction of organization and an organizational identification number for the debtor or indicate that it has none.

A signature is not required.

Note that a financing statement under Revised Article 9 is sufficient if it provides the name of the debtor, the name of the secured party or its representative and an indication of the collateral. The balance of the information referred to in this section is necessary to be contained in the financing statement for the filer to avoid the risk of filing office rejection. See Part IV below.

In addition, the financing statement should clearly indicate that it is a transmitting utility or that the transaction is a public finance or manufactured home transaction. The reason for clearly indicating those facts on the face of the financing statement is because of the different periods of duration provided for those transactions. Generally, financing statements are effective for a period of five years from the effective date. With public finance or manufactured home transactions, the effective date is thirty years from the date of filing. Financing statements relating to transmitting utilities are valid until terminated.

III. How to File

A. Initial Filing Office Hours and Forms

Under Revised Article 9, filings may be made in person and by mail and, in addition, filings will be accepted electronically over the internet and by fax. The Administrative Rules contain provisions to assist in determining when filing occurs.

Revised Article 9 contains the national forms approved by the National Conference of Commissioners on Uniform State Laws and IACA (the International Association of Corporation Administrators). Those forms will be accepted in all states that adopt Revised Article 9. The forms can be downloaded from the IACA website at www.iaca.org/members.htm.

B. Amendments, Continuations, Terminations

Revised Article 9 § 9-512 provides that a financing statement may be amended, continued or terminated by a filing that identifies by file number the initial financing statement. For a filing made prior to February 19, 2001, the file number is an 8-digit number. The first 2 digits indicate the year the document was filed. For filings made on or after February 1, 2001, the file number is a 12-digit number. The file number includes

3 segments: the year of the filing expressed as a 4-digit number, followed by a unique 6-digit number and ending with a 2-digit verification number assigned algorithmically.

Note the only requirement is the file number. We will cross-check debtor name only in cases of continuation and terminations. Such authority to cross-check ceases to be effective June 30, 2006.

With regard to terminations, when the secured obligations have been satisfied, and the secured party has no further obligation to extend credit, the secured party is obligated to file, or in commercial transactions to provide the debtor, a termination statement. Revised Article 9 permits the debtor to file a termination statement where the secured party was required to file, or provide the termination statement, and has failed to do so. In that case, the termination statement filed by the debtor must indicate on it that the debtor authorized the filing of the termination statement.

C. Corrections

Former Article 9 did not contain a provision authorizing a debtor to file a correction statement with respect to inaccurate or wrongly-filed financing statements. Revised Article 9 does. It permits the debtor to file a corrective statement setting forth the basis of the debtor's belief that the record is inaccurate or wrongly filed. The correction statement must identify the record to which it relates by:

- 1) the file number assigned to the initial financing statement to which the record relates;
- 2) indicate that it is a correction statement; and
- 3) provide the basis for the person's belief that the record is inaccurate and indicate the manner in which the person believes the record should be amended to cure any inaccuracy, or provide the basis for the belief that the record was wrongfully filed.

The corrective statement becomes part of the record, but does not affect the effectiveness of the initial financing statement or other filed record.

D. Transition Filings

If you have a financing statement filed in a jurisdiction and office before Revised Article 9 and that was effective under former Article 9, but ineffective under Revised Article 9, the filing is given effect under Revised Article 9 until the financing statement's lapse or June 30, 2006, whichever occurs earlier. To avoid lapse, and in order to continue the original financing statement, an initial financing statement, referring to the initial financing statement to be continued, must be filed in the appropriate office designated by Revised Article 9.

For example, under former Article 9, a financing statement for consumer goods would be filed in the office of the city or town where the debtor resides. If one wanted to

continue that, one would need to file an initial financing statement in the office of the state secretary. The initial financing statement must include all of the information required by Revised Article 9 and identify the pre-effective date financing statement by indicating the office in which the financing statement was filed, the date of filing and the file number, if any, of the financing statement and of the most recent continuation statement filed, and must indicate that the pre-effective date financing statement remains effective.

IV. Filing Officer Duties and Rejection

A. Indexing

Under former Article 9, presentation of the financing statement to the filing office with the correct fee constituted filing. Under Revised Article 9, “communication” of the record to the filing office and tender of the filing fee or acceptance of the record by the filing office constitutes filing. The use of the word “communication” instead of presentment is intended to authorize electronic filing.

With regard to indexing, the filing office is required to:

- 1) assign a unique number to the filed record;
- 2) create a record that bears the number assigned to the filed record and the date and time of filing;
- 3) maintain the filed record for public inspection; and
- 4) index the record according to the name of the debtor and index all filed records related to the initial financing statement in a manner that associates one with another.

The file number includes a check digit that is mathematically derived from or related to the other digits of the file number to aid in determining whether the number includes a transpositional error.

Revised Article 9 contains provisions relative to the sufficiency of debtor names. If the debtor has a name, the individual or organizational name of the debtor must be provided. If the debtor is a registered organization, the debtor’s name as it appears on the public record of the jurisdiction of organization must be listed. If a debtor does not have a name, the name is sufficient only if it provides the names of the partners, members, associates, or other persons comprising the debtor. A financing statement that provides only the debtors trade name does not sufficiently provide the name of the debtor.

A financing statement that fails to sufficiently provide the name of the debtor is seriously misleading unless a search of the records of the filing office under the debtor’s correct name, using the filing office’s standard search logic, would disclose the financing statement.

B. Acknowledgment

Under Revised Article 9, the division will provide a written acknowledgement of each filing made with the division. The acknowledgment will provide the information contained in the record, the number assigned to the record and the date and time of filing. The acknowledgment may also contain an image of the record. In all likelihood, the acknowledgement will be provided in the manner in which the filing was made.

C. Rejection

Revised Article 9-516(b) authorizes the filing office to reject a filing for the following reasons:

- 1) the record is communicated by a method or medium of communication not authorized by the office;
- 2) an amount equal to or greater than the applicable filing fee is not tendered;
- 3) the filing office is unable to index the record because, in the case of an initial financing statement, the record does not provide a name for the debtor;
- 4) the filing office is unable to index the record because the initial financing statement has lapsed;
- 5) the filing office is unable to index the initial financing statement or amendment that adds a debtor, because the record does not identify the debtor's last name;
- 6) in the case of an initial financing statement or amendment that adds a secured party of record, the record does not provide a name and mailing address for the secured party of record;
- 7) in the case of an initial financing statement or an amendment that provides a name of a debtor which was not previously provided in the financing statement to which the amendment relates, the record does not:
 - a. provide a mailing address for the debtor;
 - b. indicate whether the debtor is an individual or organization; and
 - c. if the debtor is an organization, provide the type of organization for the debtor, the jurisdiction of the organization for the debtor, or an organizational identification number for the debtor or indicate debtor has none.
- 8) if the amendment is an assignment, it does not provide a name and mailing address for the assignee.
- 9) if the record is a continuation, the record must be filed within the prescribed six-month period provided by § 9-515(d).

For purposes of the above, the record does not provide information if the filing office is unable to read or decipher the information.

If the filing office refuses to accept a filing for a reason other than set forth above or because the number on the termination or continuation statement does not relate to debtor

indicated, then the financing statement is effective as a filed record, except as against a purchaser of the collateral which gives value in reasonable reliance upon the absence of the record from the files.

If a filing has been rejected, the filing office must communicate that fact, the reason for the refusal and the date and time the record would have been filed had it been accepted. The communication must be made in the time and manner prescribed by the Administrative Rules but in no event more than two business days after the filing office receives the record.

V. Maintenance of Records

The filing office must maintain the records*, indexed and retrievable by debtor name and index number, for at least one year after the effectiveness of the financing statement has lapsed.

**Note – Revised Article 9 authorizes the filing office to destroy the written record, if it maintains the record in another authorized form.*

VI. Searching the Records - § 9-523(c)

The filing office will conduct a search of its records to determine whether there is on file any financing statement relative to a particular debtor upon the request of any person and payment of the appropriate fee. The office will indicate or provide copies of all filings relative to that debtor that have not lapsed under § 9-515 with respect to all secured parties of record. The search will include the date and time of filing of each financing statement and the information provided in each statement. In addition, the filer may request information relative to lapsed filings if that filing is still maintained by the filing office.

Revised Article 9 authorizes the division to adopt rules and regulations to implement its provisions and requires us to consult and take into consideration the Model Rules developed for consideration by the International Association of Corporation Administrators. The Model Rules contains standardized search criteria that may be adopted by the division.

Generally speaking, a search will be processed using the name in the exact form specified. There is no limit to the number of matches that may be returned. No distinction is made between upper and lower case letters and punctuation is disregarded. The word “the” at the beginning of the request is disregarded if the debtor is a registered organization. Certain words designated by the Administrative Rules as “ending noise words” will also be disregarded. Examples of such words include limited, incorporated, corporation, limited partnership, limited liability company, etc. If the debtor is an individual, and the first and middle names of such individuals include initials, the search

will include all names that begin with such initials. If the searcher does not specify any middle name or initial, the search will be equated with all middle names and initials.

The search must be completed within the time prescribed in the rules but not later than two business days after the office receives the request. For each search requested, the response will include:

- 1) the date the report was generated;
- 2) the name searched;
- 3) the certification date applicable to the report;
- 4) identification of each unlapsed initial financing statement filed on or prior to the certification date and time corresponding to search criteria, by name of debtor, by identification number and by file date and time;
- 5) for each initial financing statement on the report, a listing of all related UCC documents filed on or prior to the certification date; and
- 6) if requested by the searcher, copies of all UCC documents revealed by the search.

VII. Filing Fees

The fee for filing and indexing each record under Revised Article 9 depends on the number of debtors to be indexed. The fee is twenty dollars (\$20.00) for up to two debtors, and twenty dollars (\$20.00) for each additional debtor thereafter.

VIII. Searching

Revised Article 9 establishes the fee for two types of searches performed by the division. The first search is a simple computer printout listing all financing statements and related filings naming a particular debtor. The list will include the file number and secured party for each filing. The fee will be ten dollars (\$10.00).

The second search will include copies of the first 15 financing statements and related filings. The fee will be thirty dollars (\$30.00). For each additional page the fee is one dollar (\$1.00).

