

Revised Article 9 – Modern and Uncluttered

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Introduction

The world of secured transactions was turned on its axis on July 1, 2001 for most of the United States (Connecticut, Alabama, Mississippi, and Florida's Revision to Article Nine became effective on January 1, 2002); on that date, Revised Article Nine of the Uniform Commercial Code became a reality after years of legal wrangling. Drafters of Revised Article Nine devised a code to be simplistic and uniform in its application. Although not perfect, Revised Article Nine is a modern and uncluttered approach designed to assist both creditors and debtors with secured transactions. Even with all of the build-up and hype surrounding the new revision, many were still taken aback on July 1, 2001, and consequently, were unprepared to deal with the changes affecting the manner financing statements were filed and executed. In this article, I will attempt to hit the highlights of Revised Article Nine.

Contents of the Financing Statement

Revised Article Nine has streamlined the requirements for the effectiveness of a financing statement. In general, a financing statement is now considered sufficient if it contains the name of the debtor; the name of the secured party or the secured party's representative; and an identification of the collateral covered by the financing statement. U.C.C. § 9-502(a). The debtor's signature is no longer required to be on the financing statement; the elimination of the debtor's signature is intended to help encourage paperless and electronic filing.

U.C.C. § 9-502 (b) of Revised Article Nine gives additional requirements for financing statements that are real property-related. In addition to the elements provided in the above paragraph, such financing statements that typically cover fixture filings or timber to be cut or minerals to be extracted must include the following:

1. An indication that the financing statement covers this type of collateral;
2. An indication that the financing statement shall be recorded in the real property records;
3. description of the real property to which the collateral is related; and
4. The name of the record owner of the real property to which the collateral is related.

The description of the real property should be sufficient for identification; the test for sufficiency of the description is whether the financing statement may be discovered in the real property records by a searcher.

The uniform forms of a financing statement (UCC-1), an addendum to the financing statement, and an amendment to the financing statement (UCC-3) are provided as the new national standard forms for filing (and reproduced at the end of this discussion). Note that Revised Article Nine requires more information about the debtor in order for the initial financing statement to be allowed for filing; it is still an effective document without this additional information, but it may be rejected by the filing office for not containing the following:

1. A mailing address for both the debtor and the secured party;
2. An indication of the "nature" of the debtor (is the debtor an individual or an organization); and
3. If the debtor is an organization, the type of organization (is the organization a corporation, limited liability company, partnership, etc.), the jurisdiction of the organization, and the organizational identification number, if any exists. U.C.C. § 9-516.

Where to File the Financing Statement

Revised Article Nine's key to filing the financing statement is location, location, location. The debtor's location is paramount in determining where the financing statement must be filed. The basic rules for determining the location of the debtor are found in U.C.C. § 9-307 (b):

1. An individual debtor's location is the individual's principal residence;
2. An organization debtor with only one place of business is located at its place of business; and
3. An organization debtor with more than one place of business is located at its chief executive office.

If the debtor is not located within the United States and its jurisdiction does not have a public filing system like the Uniform Commercial Code, the debtor's location is considered to be the District of Columbia for filing purposes. U.C.C. § 9-307 (c). If the debtor is an organization registered under state law (i.e., a corporation domiciled in a state), then its location would be the state in which it was organized. U.C.C. § 9-307 (e). U.C.C. § 9-307 (f) states that an organization debtor organized under federal law is deemed to be located in the District of Columbia unless one of the following exceptions apply: (1) federal law designates a state of location; or (2) the organization debtor designates its own state of location under federal authority. This new rule takes much of the burden off the secured party filing the financing statement and also helps alleviate any doubt as to where a searcher should look for any potential UCC filings. Note that although a central filing of the UCC financing statement with the applicable state's Secretary of State office generally suffices, a county filing continues to be necessary for UCC financing statements which affect real property.

Execution of the Financing Statement

As mentioned above, the debtor's signature is no longer required to be present on the financing statement. However, the debtor must "authorize" the secured party to file a financing statement without the debtor's signature. U.C.C. § 9-509 (a). Authorization is achieved by the debtor signing or otherwise becoming bound to the original security agreement. U.C.C. § 9-509 (b).

Filing the Financing Statement

U.C.C. § 9-516 of Revised Article Nine discusses the actual process of filing a financing statement. Basically, filing occurs when a record is "communicated" to the filing office and the filing fee is paid or accepted by the filing office. "Communication" to the filing office is designed to include electronic transmission of financing statements. However, the filing office must authorize the type of filing for "communication;" otherwise, the filing will be defective. U.C.C. § 9-516 (b).

Revised Article Nine also provides a laundry list of reasons that a financing statement may be rejected by the filing office for filing. Note that this is a mandatory list and may not be modified by the filing office. The drafters of Revised Article Nine wanted to develop a truly uniform system without giving discretionary powers to local filing offices which might employ their own reasons to reject a filing. The secured party may consider their filing as effective unless said filing is rejected under the provisions in U.C.C. § 9-516.

A filing must be rejected if:

1. "Communication" of the financing statement is by an unauthorized method (i.e., electronic filing of the financing statement where the filing office has not authorized electronic filing);
2. The filing fee is not paid;
3. The debtor's name is not provided; and
4. Information required (such as a mailing address for the secured party and debtor and organization debtor information requirements) is not provided in the initial financing statement and any amendments.

Note that a real property-related financing statement must also contain a sufficient description of the real property in order for the filing to be accepted. If a filing office wrongfully rejects a financing statement that is in compliance with U.C.C. § 9-516, the filing is deemed as effective between the debtor and the secured party. However, the filing would not be effective as against a third party which had reasonable reliance on the lack of a recorded filing in the UCC index. U.C.C. § 9-516 (d).

U.C.C. § 9-519 of Revised Article Nine outlines the procedure for maintaining a recording index in the filing office. In general, the filing office should index an initial financing statement by the name of the debtor and index all subsequent related filings to the initial financing statement in such a way that all associated documents are connected

to each other. U.C.C. § 9-519 (c). The filing office may not destroy a financing statement and any related filings from the recording index until one year after the effectiveness of the financing statement has lapsed. U.C.C. § 9-522. Note that the failure of the filing office to index the record correctly does not render the recording ineffective. Therefore, the risk of office error is placed on the searcher of the UCC index rather than the person who filed the record. U.C.C. § 9-517.

Duration of the Financing Statement

Revised Article Nine does not change the general rule of a financing statement being effective for five years from the date of its filing. However, the following exceptions in U.C.C. § 9-515 apply to this general rule:

1. Public Finance or Manufactured Home transactions: effective for thirty years
2. Transmitting Utility financing statement: effective until terminated
3. Record of Mortgage as a financing statement: effective until the mortgage is released or satisfied of record or its effectiveness is terminated as to the real property

In order to keep the financing statement effective, a continuation statement (found on the UCC-3 form) may be filed only within the six month period before the expiration of the five year or thirty year statute of limitations period. When the continuation statement is appropriately filed, the financing statement shall remain effective for an additional five year period beginning on the day on which the financing statement would have lapsed. U.C.C. § 9-515.

Corrections to the Financing Statement

In a change from the former Article Nine, Revised Article Nine allows for the possibility of filing a correction statement to a financing statement. U.C.C. § 9-518 of Revised Article Nine states that a debtor may file a correction statement to a record with the filing office if the debtor thinks that the record is inaccurate or wrongfully filed. However, the debtor's filing of a correction statement does not change the effectiveness of the initial financing statement or other filed records.

Post-Filing Changes to the Financing Statement

If the debtor's name is changed in a way that makes the filed financing statement seriously misleading, an amendment to the financing statement may be filed within four months after the name change in order for the financing statement to remain effective. If an individual or unregistered organization debtor's location changes to another state, U.C.C. § 9-316 (a)(2) states that the secured party must refile its financing statement in the new state within four months after the change of the debtor's location for the financing statement to remain in effect. Note that Revised Article Nine does not address the possibility that a registered organization would change its location. If the registered organization debtor dissolved, its state of organization would continue to be considered

its location for UCC filing purposes. U.C.C. § 9-307(g).

Transition Rules

U.C.C. § 9-705 of Revised Article Nine deals with financing statements effective under the former Article Nine. The security interest continues to be effective so long as the filing is in compliance with Revised Article Nine provisions. A financing statement filed in accordance with former Article Nine is effective to perfect its interest under Revised Article Nine until the earlier of:

1. The usual lapse period for the financing statement; or
2. June 30, 2006

Note that a continuation statement filed after Revised Article Nine takes effect will not operate to continue the effectiveness of a financing statement filed under former Article Nine; however, upon a timely filing of a continuation statement after Revised Article Nine takes effect, the financing statement may enjoy continued effectiveness as long as the following criteria are met:

1. The continuation statement and original financing statement must be filed in the same state and office;
2. The state and office in which both statements are filed is the correct state and office for filing a new financial statement under Revised Article Nine; and
3. The continuation statement brings the old financial statement into accordance with Revised Article Nine.

In lieu of filing a continuation statement, the secured party may ensure that their financial statement filed under former Article Nine remains effective by filing a "new" initial financial statement that corresponds with the provisions under Revised Article Nine. All requirements listed in U.C.C. § 9-706 must be satisfied, and the "new" financial statement must also be filed in the correct state and office.

Conclusion

Revised Article Nine untangles many of the complications and inconsistencies found in the former Article Nine. Debtors and creditors who populate the world of secured transactions have a clear and precise methodology to use when dealing with the filing of financing statements. No longer will debtors and creditors have to educate themselves on the different filing procedures and forms present in various areas. Revised Article Nine provides a guidebook that is user-friendly to those who seek to venture into the world of secured transactions, and more importantly, gets the traveler to where he wants to go.