

Recorders Guide to New Article 9-5

of the Uniform Commercial Code¹

Pre-Effective Version²

Prepared by:
Property Records Industry Joint Task Force
Standards Committee
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Note 1—This draft paper is published for discussion only. Papers must contain the notation “Approved by the Executive Board of the Property Records Industry Joint Task Force on [date]” to represent an official paper issued by the Task Force.

Note 2—The intended model effective date of new Article 9 is July 1, 2001. It may be a later date in your state depending on your state’s version of the statute. Until effective date in your state, recording offices must abide by prior law. Until then this Guide deals with **future** requirements.

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Chapter 1—Introduction

[Note to committee: This chapter need work to get the reader started. Suggestions are welcomed, of course.]

Article 9 of the Uniform Commercial Code deals with secured transactions involving **personal** property whereas real estate recording law deals with **real** property. For some kinds of secured transactions, it is necessary for the secured party to file a form, called a financing statement, with the appropriate filing office. Some of these transactions require filing the form with a recording office.

This Guide explains

- (1) how the Uniform Commercial Code—UCC for short—works with respect to recording offices, how the UCC filing differs from real estate recording,
- (2) what a financing statement and changes to it contain, and
- (3) what the job of a recording office is with respect to accepting filings and searching for filings under the UCC.

This Guide has been prepared well in advance of the actual enactment and effective date of the proposed new Article 9 so that recorders will be aware of issues important to them under the new Article 9. The Guide explains these issues, and proposes statutory language to deal specifically with the differences between central UCC filing offices and recording offices.

Although UCC filings may represent only a few percentage points of the documents accepted for recording in recording offices, it is expected under the UCC that each recording office is conversant with its provisions and properly follows the rules for acceptance and rejection of UCC filings.

This Guide is designed for recording office personnel, whether or not they have experience with accepting filings under the present UCC. The Guide does assume that the reader is familiar with the recording of real property documents—deeds, mortgages, assignments and releases. The Guide therefore starts with a review of differences between real estate law and the UCC.

This is not a legal text. Legal interpretations of Article 9 will come from the legal community and courts as they look at issues raised by the new Uniform Commercial Code Article 9. Rather, the focus of this Guide is to give you, the real estate recorder an introduction to what the Uniform Commercial Code is and how the new Article 9 will impact the operation of recording offices.

Terms Used in this Guide

There are some term used in this Guide that could be misconstrued unless you understand their specific meanings, as follows:

1. The term **filing** is used interchangeably to mean **recording** when referring to the handling of UCC in a recording office.
2. **UCC filing office** refers to a central filing office in a state that handles only UCC filings whereas a **recording office** handles real property recording including realty-related UCC's. The term **recorder** is sometimes used as shorthand for **recording office**.
3. This Guide uses the term "**prior**" to refer to the version of Article 9 in effect before enactment of the proposed model act, which is referred to as the "**new**" Article 9. **Article 9-4** refers to the filing part of the prior UCC filing statute, whereas **Article 9-5** refers the filing part of the new, proposed model act.
4. The terms **personalty** and **personal property** are used interchangeably to refer to the collateral securing transactions under Article 9 of the Uniform Commercial Code, as opposed to real property.
5. The term **mortgage** also means **deed of trust**.

New Version of Article 9

The version of model Article 9 used in this Guide is entitled "Pre-Final Official Draft" and is dated July 30, 1998. It is the draft approved by the National Conference of Commissioners on Uniform State Laws (NCCUSL).

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Internet Sites

You can locate the latest version of Article 9 at <http://www.law.upenn.edu/library/ulc/ulc.htm>.

You can locate a copy of this document and information about the Task Force at <http://faxxon.cifnet.com/taskforce/> (home page www.faxxon.com).

How To Use This Guide

This Guide is written to be read from front to back. If you are very conversant with the principles and practices of prior Article 9-4, you may be tempted to skip around. We do not advise this. New Article 9 took about ten years, untold hours of professional time and innumerable arguments to fashion. Its provisions fit together like a gigantic puzzle that has just been completed. If you try to consider just one area and drop a piece or two, its meaning may unravel before your eyes.

All statutory language is printed in *italics*.

The Appendices—The Danger of Reading Too Much Into New Article 9-5

Appendices I through IV contain the actual language of Article 9. You must be careful if you read this material that you do not misconstrue language that was no different from what appears in prior Article 9-4. Before you decide that some language is ill-considered, confusing or wrong, you must compare it to the like section in prior Article 9-4 to see if there is any difference. Even with the major changes in the law, a significant part of it is still the same as before (which makes sense since the UCC has been around since the 1950's).

Background

A drafting committee of the National Conference of Commissioners on Uniform Laws and The American Law Institute has spent the past several years developing a new text revising Article 9 of the Uniform Commercial Code. New Part 5, which replaces prior Part 4, deals with the system for filing, indexing and maintaining UCC forms which provide notice of security interests to the business public.

The real estate recording industry has been represented in this process to the extent that the co-sponsors of the Task Force, NACRC and IACREOT, had representatives on a committee comprised of public and private industry participants, as part of what was known as the Article 9 Filing Project. That committee has not been active for some time now.

As a result, there has been no single, national forum for recorders to review or influence the course of the revisions process in its later stages until the creation of the Property Records Industry Joint Task Force.

The mission and objectives of the Property Records Industry Joint Task Force include provision for consideration of the Uniform Commercial Code and its impact on recording operations throughout the US. The Property Law & Legislation Committee of the Task Force has identified the UCC as its first area of focus for review and lobbying on behalf of recording offices nationwide.

Task Force Position (Proposed)

The Property Industry Task Force Steering Committee believes, based on the following analysis, that the new Article 9 Part 5, is a significant advance in the direction of uniformity of the Uniform Commercial Code among the states, and that both the public and private sectors should support its passage unaltered in all states, except for inclusion of the optional wording discussed in the chapter entitled "Optional Article 9-5 Language Pertaining to Recording Office Operations."

This Guide is **not** written for the purpose of arguing any of the following issues, which are of concern to certain individual states.

1. Dual filing
2. Farm-related and consumer goods local filing

3. Loss of income to counties
4. Lack of signature requirement

These issues are explained as appropriate to understanding the new Article 9.

These issues will be addressed in each state when the state legislature reviews the revised Code for enactment. This Guide does, however, discuss the reasons for these and other changes. The chapter entitled “Issues for Recorders” discusses all the formerly controversial issues.

Comments and Suggestions

Your comments and suggestions about this Guide are welcomed and encouraged. You may forward them in any form to Carl R. Ernst, Chair of the Standards Committee:

- Call 602-563-6479
- Fax 602-563-6480
- Email cernst@iname.com
- Enter comments in the Standards Committee discussion group at <http://faxxon.cifnet.com/taskforce/>

Good reading.

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Chapter 2—Real Estate and the Uniform Commercial Code

[Will be put in order as chapter 2 in next revision.]

The constituency of recording offices, the people who specialize in the preparation and filing of real property documents, are unfamiliar with the Uniform Commercial Code. This chapter is an article written by Carl R. Ernst to explain the differences between real estate and UCC to these people, and is used here as an introduction to recorders with his permission.

What Does UCC Have To Do With Real Estate?

This chapter has been written for two reasons:

1. If you get involved with fixtures that could be construed by a court as equipment, you need to use the UCC to protect your security interest in such items of collateral.
2. Even for those of you who do not get involved with the UCC, understanding the differences between the recording systems for personal property liens and real property liens illuminates the most significant features of real estate recording systems.

What is the Uniform Commercial Code?

The simplest way to compare real estate statutes (RE) and the Uniform Commercial Code (UCC) is to say that **the UCC is to personal property as mortgages/trust deeds are to real property**. Although this comparison is inaccurate in the details, as discussed below, it is a good place to start in understanding both the statutory and practical differences between real estate recording and UCC filing. (As in other sections of this *Guide*, the term “mortgages” will be used in this chapter as shorthand for mortgages and deeds of trust.)

It would be more accurate to say that the **security agreement** behind each UCC loan transaction is the practical equivalent of the **mortgage** behind each real estate loan. Each of these agreements gives one party—the secured party (UCC) or mortgagee (RE)—a security interest in property owned by the other party—the debtor (UCC) or mortgagor (RE)—as collateral for a loan. The filing of a UCC financing statement and the recording of the mortgage give notice of the lien to the rest of the world.

Here are a number of ways to compare UCC filings with real estate recordings:

1. Real estate is a document recording system/ UCC is a notice filing system

Both real estate and UCC laws put the public on notice about defined types of transactions, but the ways they do this are very different. Recording a real estate document means literally that the original document representing the transaction—the deed, mortgage, etc.—is placed in the public record at the recording office. Therefore, anyone who has a need to know about the transaction can read the actual documents in their entirety.

Under the UCC, a financing statement is said to be “filed.” This financing statement is not the transaction itself, but rather a summary of the transaction intended to notify the public in a general way that the secured party has some kind of lien on specified personal property of the debtor. Anyone who needs to know the details of the actual transaction must contact the secured party, who keeps the security agreement and other documentation in its own private, internal records.

Recording of realty-related UCC's is a hybrid of filing and recording, but is almost always recorded in the grantor/grantee index as a type of document.

2. Real estate is an asset-based system/ UCC is a liability-based system

The old cliché is that no more real estate is being made; that's an important distinction between real estate law and the UCC. Each local recording office has under its responsibility a certain area of land each piece of which is

identifiable on its records. Therefore, every document recorded points in some way, direct or indirect, to specific, known parcels of land. Like motor vehicle records, we can say that real estate recording systems are asset-based.

Personal property, on the other hand, can vary from the very specific and identifiable—for example, a certain farm tractor—to the wholly intangible—for example, accounts receivable. The assets that collateralize a debt under the UCC are only identified in the collateral statement on the financing statement. Therefore, UCC systems are designed to give notice of liability, not to catalog assets. (A few categories of personal property, such as motor vehicles, are “titled,” but that is the exception to the rule.)

**3. All real estate documents are recorded in a county or other local office/
Most UCC financing statements are filed in a central state agency**

Since UCC filings do not have to connect to an asset-based system, the filing system does not need to be localized. Therefore, in most states, UCC filings other than those related to real estate collateral are maintained at a central state agency, usually under the Secretary of State.

**4. Real estate documents are accepted by 3,600 recording offices/
UCC financing statements are accepted by over 4,300 filing offices**

Every real estate recording office must accept UCC filings with certain personal property collateral—for example, a telephone system wired throughout a building—which may also be considered fixtures. Therefore, in a sense real estate recording offices are a subset of UCC filing offices.

The other 700 UCC filing offices that are not also recording offices are accounted for by 50 central state filing offices, plus local variations on the prior UCC model act that require UCC filing in towns in many New England States and in separate offices in Pennsylvania. The new Article 9 only requires filing on personal property collateral in central UCC filing offices and on realty-related collateral in recording offices.

**5. Real estate law consists of loosely related statutes that vary widely from state to state/
UCC law consists of state variations on a nationally promulgated model act**

The Uniform Commercial Code model act is drafted by an independent committee of attorneys acting under the authority of the National Conference of Commissioners of Uniform State Laws. NCCUSL, in its own words, “is now in its 106th year. The organization is comprised of more than 300 lawyers, judges, and law professors, appointed by the states as well as the District of Columbia, Puerto Rico, and the U.S. Virgin Islands, to draft proposals for uniform and model laws and work toward their enactment in legislatures. Since its inception in 1892, the group has promulgated more than 200 acts, among them such bulwarks of state statutory law as the Uniform Commercial Code, the Uniform Probate Code, and the Uniform Partnership Act.”

UCC professionals joke endlessly about the lack of uniformity in the “Uniform” Commercial Code because many states, in the process of enacting their own version of the model act, have amended the model act in a variety of ways that confuse and confound even UCC documentation professionals.

In truth, however, the UCC is very uniform by comparison to real estate law. The only area of real estate law where model acts have been developed is in the form of notarial certificates, and even in this one aspect of real estate documentation there are three different model acts for each state to chose from.

**6. Real estate recording is document based/
UCC filing is forms-based**

Although some states have promulgated standard documents to deal with various aspects of real estate transactions, there is nothing like the standards developed for forms that are used for UCC financing statements and other UCC filings. In real estate, you prepare a document for recording; in UCC, you fill in a UCC form for filing.

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This is not to say that forms are not used in real estate transactions; many states require transfer tax and other types of forms to accompany certain types of documents, but the documents themselves are not forms. Nor is this to say that real estate is rules-based whereas UCC is forms based. Both types of documentation require adherence to rules affecting the content and form of the document.

7. Each real estate recording has a life of its own/ A UCC filing may include many related forms

In the vocabulary of the UCC, a filing consists of an original financing statement, any subsequent amendments to the original financing statement, and any continuations to the original financing statement. **All these related forms, taken together, comprise an active UCC filing.** The indexing systems used to track UCC filings generally are designed to reflect the current status of the filing, that is, name and address changes and assignments are all recorded in a master computer record as changes occur.

In a real estate indexing system, on the other hand, each document usually stands on its own. For example, an assignment is indexed alone in the grantor/grantee index. Except in the document itself, there is no indication in the indexing system as to where the original mortgage is located.

8. A real estate recording is forever/ A UCC filing is time limited

Once a real estate transaction is recorded, the document copy is essentially maintained in the recorder's system for all time. In the case of a mortgage, for example, the satisfaction is recorded with a reference—book & page, etc.—back to the original mortgage document, and the two documents remain on the record although the transaction is complete.

A UCC filing is typically “active” for a period of five (5) years, unless continued for an additional five years at a time. During each five year period, the filing may be “amended” any number of times, for example, for a change in the debtor name, an assignment to a new secured party, or a change in the collateral securing the underlying debt. Also during any five year period the filing may be “terminated” if the underlying debt is paid off.

However, unlike a mortgage, a UCC filing will automatically become ineffective—“lapse”—at the expiration of the five year period unless a continuation statement is filed, typically, within six months prior to the lapse date.

When a UCC filing is terminated or lapses, the records relating to the filing are literally deleted from the record-keeping system of the filing office. (A copy of the forms as they were filed will usually continue to exist on some imaging medium such as microfilm, but the indexes by which the forms can be accessed will no longer be available to a searcher.)

There is a similarity between the law of real estate satisfactions and the law of UCC terminations. Both typically contain provisions requiring the lender to submit to the recorder, or to the debtor for recording, a termination form (UCC) or a release of mortgage document (RE) upon request of the debtor after the debt is paid.

9. A mortgage is satisfied, released or canceled/ A UCC filing is terminated or lapses

Since a UCC filing is time limited, its effectiveness is said to “lapse” by the operation of law after a period of time, five years from the date the original was filed in most states.

In fact there is much confusion in real estate circles because of the UCC's use of the word “release” to refer to a UCC filing that **does not** terminate the original financing statement. In UCC parlance, a release usually refers to a “partial” release because a full release would usually be the equivalent of a termination.

**10. Real estate documents are recorded and returned/
UCC transactions are filed and acknowledged**

Here's another confusing difference in the way these two types of documents are handled. It is usually not necessary to submit a copy with a real estate document. You just send in the original; the recording office stamps and images it; and the document is returned to you for safekeeping. (Yes, we recognize that certain recording offices, in Louisiana in particular, do not return the original so a copy must be submitted, like a UCC filing, for acknowledgment of the recording reference information.)

The typical UCC form, on the other hand, traditionally had three parts, carbon interleaved. The third part is called the "acknowledgment copy." The filing office stamps the three part form with filing reference numbers, the imprint of which is on the third copy because of the carbon, and returns the acknowledgment copy to the filer. This definition of the word "acknowledgment" has nothing to do with the "acknowledgment"—the notarial certificate—on a real estate document.

Thus, when the UCC documentation specialist calls the recording office and says, "Where's my acknowledgment," the recorder responds, "It's on the document. What's the problem?"

**11. Real estate documents may have exhibits, acknowledgments, etc./
UCC filings may have attachments**

A typical real estate document may include separate pages of legal descriptions of property, acknowledgments, and other materials required in order for the recording to be legally sufficient. Except for very simple transactions, such as a single mortgage release, most documents require multiple pages.

On the other hand, UCC forms, properly completed, **usually do not require any additional pages** beyond the form itself in order to be legally sufficient, unless the space on the form itself is inadequate to list debtors, secured parties or collateral. Therefore, additional pages are known as "attachments" to the form. In some filing offices, the attachments are actually stored in files separate from the form itself because they are "oversizes." that is the form is frequently 5" by 8" while the attachments are 8½" by 11," so they don't fit in the drawers where the forms are filed.

**12. Basic real estate recording fee structures are page-based/
Basic UCC filing fee structures are forms-based**

Reflecting the differing necessity for additional pages, the typical real estate recording fee in a state can be stated as so many dollars for the first page of the document and so many other dollars for each subsequent page. Additional fees are typically based upon transactions indexed, references to previously recorded documents, and document format requirements.

The typical UCC filing fee in a state can be stated as so many dollars for the form and so many dollars for each debtor name indexed. Some states charge for attachments, but many states have no fees for attachment pages, since, as noted above, there is in most cases no reason to attach anything to a UCC form as it is sufficient by itself as notice of the transaction. Some additional fees are similar to real estate recording fees, such as for debtor name indexing and non-standard form.

**13. Signatures on real estate documents require "acknowledgment"/
Signatures will no longer be required on UCC forms**

All states require the acknowledgement of signatures on real estate documents by a notary; some also require witness signatures as well. This is to assure to some extent that signatures are authentic on original documents submitted for recording.

Both prior and new Article 9 require that the debtor sign the security agreement which is referenced by a UCC financing statement, there has never been a requirement for authentication since security agreements are private

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documents between known parties. Under prior Article 9, the debtor signs the financing statement; under new Article 9, the debtor is no longer obliged to sign (although she may) because the security agreement gives the secured party the authority to file the notice form.

14. Most recording offices index assignments of mortgages only by assignor and assignee/

Assignments of security interests in personal property must be indexed by debtor as well as assignor and assignee

There is no statutory requirement in real estate law or in the prior UCC regarding the indexing of assignments of mortgages. It is the practice of most recording offices to index the assignor as grantor and the assignee as grantee. This practice however makes it difficult to match up mortgages and assignments in recording offices.

The new Article 9 requires recording offices also to index the debtor name so that the assignment is attached to the initial financing statement in a search by debtor name.

(Recorders who do not index mortgagors on assignments should consider extending their indexing procedures to make it easier to match assignments to mortgages.)

15. Many recording office document reject criteria are based on experience/

Reject criteria for UCC forms will be specified by statute

Recorders and UCC administrators have traditionally established procedures to reject documents that they believe might be legally invalid. In addition, there are some state statutes that specifically require a certain format or element of content, which require rejection.

Under the new Article 9, the reasons for rejection of a UCC form are stipulated. A form may be rejected only for the enumerated reasons and no others.

Chapter 3—Frequently Asked Questions (FAQ's)

1. What's Different About Where to File UCC Financing Statements Under the New Article 9?

As a general rule under the new Article 9, a financing statement is properly filed in the filing office

- (1) for personalty collateral, where the “place of business” or individual residence is located, and
- (2) for realty-related collateral, where the collateral is located.

a. No Local Personalty Filing

This rule differs from the where to file rule under the prior Article 9 to the extent that some 28 states require local filing for two or three personalty collateral:

- (1) Farm related collateral, including equipment used in farming operations, farm products, and accounts arising from sale of farm products,
- (2) Crops, and
- (3) Consumer Goods.

(Filings are rare in the third category, consumer goods.)

b. No Dual Filing

In addition nine (9) states—Arkansas, Massachusetts, Missouri, Mississippi, North Carolina, , New York, Ohio, Pennsylvania and Virginia—have not done anything about their dual filing systems. New Hampshire in 1998 enacted legislation to eliminate its dual filing system as of July 1, 2001.

c. No Separate UCC Index Required in Recording Offices

Under the new rule, there will be no filing for personalty at the local level. Therefore, there will be no need for any recorder to maintain a separate UCC index for these items. All UCC filings received will be indexed in the grantor/grantee index

Take a look at the language of Section 9-307 in Appendix II if you would like to know more about the fine points, such as, where to file on personalty of an individual or an off-shore corporation.

2. What About Dual Filing?

Dual filing is an anachronism that only lives on because of the potential impact of its elimination on the funding of local government in those nine (9) states that still require it—Arkansas, Massachusetts, Missouri, Mississippi, North Carolina, New York, Ohio, Pennsylvania and Virginia. Since 1995 two states—Maryland and Vermont—have converted from dual filing, and New Hampshire will convert as of July 1, 2001.

3. Does a UCC Filing Need to Contain an Address in the County Where It Is Filed?

No. The debtor and secured party may be located outside the county, and the address of the record owner, even if it is in the county, is not required to be included on the filing under Article 9-5. However, “a description of the real property to which the collateral is related” is required with both initial financing statements and with any amendments. See the Chapter 7 discussion of optional language to change this requirement.

4. What Is Different About Indexing UCC Filings Under New Article 9-5?

There is one very important change: **On statements of assignment, debtor and record owner names must be indexed as grantors as well as the assigning secured party.** There is no change required in input rules or indexing logic.

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5. What Are the Most Confusing Differences Between Real Estate and UCC?

Two language variations cause the most trouble to recorders:

- (1) Release—A mortgage is **released** or **satisfied**; a UCC filing is **terminated**. If a “release” is filed against a UCC filing it means a **partial release of collateral**; there is no such thing as a full release of a UCC filing.
- (2) Acknowledgment—Signatures on real estate documents are **acknowledged** by a notary; acceptance of a UCC filing is confirmed by returning an **acknowledgment** to the filer.

For a complete summary of differences between UCC filing and real estate recording, read Chapter 2.

6. Why No Signatures?

Under new Article 9, which in part is designed to foster efficient central electronic recording systems, new protections exist for both debtors and secured parties, protections that do not depend on signatures, which of course can be forged anyway. Among the principles that protect debtors—who today have no protection from fraudulent filings under Article 9—is a new right for them to file corrections when they believe filings against them are incorrect. Searchers and secured parties are protected, as they have always been in recording offices, by a new indexing system required in UCC offices that keeps all filings on the index until lapse date.

It is actually not correct to say that signatures have been eliminated. UCC forms are not documents in the same sense as real property documents. Signatures are still required on the underlying documents, which recorders never see.

It is also true as a consequence of the no-signature requirement that there is no notarization requirement.

7. Does a Recording Office Need To Do Anything When a Filing Lapses?

No. Once a filing has lapsed for a year, a filing office may eliminate it from its index; however, there is no requirement to eliminate it. Unlike UCC filing offices, recording offices never eliminate entries from their grantor/grantee index. It is up to anyone reviewing such filings to determine whether the filing is effective or lapsed.

8. What About Lost Revenue in My Office?

Each recording office should compute the amount, if any of what we have called “lost net revenue.” This is defined as lost revenue from personalty filings that no longer are handled by recording offices, less reduction in recording office costs from not having to maintain a UCC index. The task force urges each state to maintain revenue neutrality for recording offices by increasing, where necessary, local recording fees or by sharing with recording offices increased central office UCC filing fees.

9. What Are the Criteria For Rejecting a UCC Filing?

Unlike the prior Article 9, the new Article 9 is specific about the instances in which a recorder is allowed to reject a UCC Filing. The full list of reasons for rejection appears on page 24 of this Guide. **These, and only these, errors and omissions are cause for rejection.** Other “home grown” reject criteria are not recognized under the Uniform Commercial Code. For example, you may not refuse a filing just because it does not have an address in your jurisdiction. **A UCC filing that does not contain one of the enumerated errors is considered filed or recorded, even though a recorder refuses it.** Therefore, by refusing an otherwise valid UCC filing, a recorder is guilty of creating a hidden lien. (This is a type 1 hidden lien, as discussed under item 6 in Chapter 6.)

10. What Is the Responsibility of a Recording Office When Rejecting a UCC Filing?

If a UCC filing is rejected, the recording office must communicate to the person who submitted the filing:

- (a) the fact that the filing was rejected,
- (b) the reason for rejection, and

(c) the date and time¹ the filing would have been filed had it been accepted.

In addition, the office must return the reject notice within two business days unless the wording of 9-520 has been changed per the recommendation in Chapter 7.

11. What Happens If a Recording Office Rejects a Legally Valid Filing?

The section entitled “What Constitutes Filing/What May Be Rejected (9-516, 517, 520)” in Chapter 5 includes a chart of all the legally valid reasons for which a UCC filing can be rejected. If a recorder rejects a filing for any other reason, the filing is still legally effective, even though no one can find it on the recording office index. It constitutes a hidden lien. (The discussion of hidden liens in Chapter 6.) Under new Article 9-5, all UCC filing offices, including recording offices, are to go out of the business of reviewing UCC forms for legal effectiveness.

Someone on the Standards Committee summarized this in the rhyme: DON'T OVERDUE THE REVIEW.”

It is therefore the responsibility of each recording office to assure that it follows the rejection rules as stated and without local modification.

12. How Can Recorders Work With the Central Filing Office Administrators?

First and foremost, each state recorder association should inform the state administrator and legislators about the optional language they wish to have included in their version of new Article 9.

State level administrators will be asking for funds as part of the legislative process to make the system changes they need in preparation for the new act. To the extent that recorders would like access in their offices to the central UCC index on behalf of their local constituents, each state recorder association should make this known at the same time as the state level administrator ask for funds.

13. What Do Recorders Need To Know About Transition Rules?

The transition from the prior Article 9 will be complex for central filing offices, and for recording offices in those states where filing of consumer goods and farm-related collateral is still at the local level. Actual transition procedures will be added to Chapter 9 once it is clear how they will work..

In any event, it will be best to refer any requests from the public about these rules to an attorney.

14. Can You Sum Up the Responsibilities of a Recording Office Under the New Article 9-5?

The new Article 9 clarifies the ministerial nature of any office that accepts UCC filings with respect to the rejection, acceptance and indexing of UCC filings. The responsibilities of a recording office are enumerated in what is called “Subpart 2. Duties and Operation of Filing Office,” as follows:

1. A recording office must accept any UCC filing that
 - (a) is submitted on the national standard forms or state approved forms or methods, and
 - (b) does not have a defect specifically enumerated in Section 9-516(b) (see the reject chart in Chapter 5), and
 - (c) is accompanied by at least the correct filing fee.
1. If a UCC filing is rejected, the recording office must communicate to the person who submitted the filing:
 - (a) the fact that the filing was rejected,
 - (b) the reason for rejection, and
 - (c) the date and time¹ the filing would have been filed had it been accepted
1. Once a UCC filing is accepted, the recording office must
 - (a) assign a unique number, e.g., book & page,

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- (b) create a record, such as a copy of the UCC filing, containing the unique number and the date and time of filing¹,
- (c) maintain the record for public inspection,
- (d) index the filing as it would be under the mortgage/deed of trust indexing statute of the state, but to include in any event the name of the debtor and record owner as if they were mortgagors,
- (e) index the filing by the unique number, and
- (f) if the filing is an assignment, index it under the name of the assignor **and debtor** and grantor and the assignee as grantee.

Note 1—The time need not be specified if the office assigns the identical time to all filings received during one day.

15. Are We Required to Do UCC Searches for the Public Under the New Article 9?

Not unless your office has done so in the past and wishes to continue to do so. You must at least continue to “make available” to the public the information on your grantor/grantee index that allows the public to obtain a copy of the financing statement and related filings. It would be good practice for you to provide to the public a written manual outlining your indexing rules, search logic, and how to conduct a search using your in-office terminals or remote communications.

Other

Based on discussion of the new Article 9 at the 10/8/98 committee meeting and questions we receive, this section will be expanded to include other questions that have been brought up. Future revisions will continue to expand this section as recorders utilize this Guide and address more questions to the committee.

Chapter 4—Principles of New Article 9 Part 5 (A Rebalancing Act)

Article 9 of the Uniform Commercial Code has been revised by a drafting committee under the auspices of, and has been approved by, the National Conference of Commissioners on Uniform State Laws. The draft used for this Guide is dated July 30, 1998.

This chapter was written to summarize Article 9-5, “Filing,” which replaces the prior 9-4, including the most significant changes to Article 9-4.

The first sentence of the drafting committee’s prefatory comments to a prior draft states, “The filing system is the heart of Article 9.” In other words, the drafters recognize that the proper functioning of the UCC filing system in each state is a necessity for Article 9 to work equitably. Therefore, the drafting committee spent considerable effort toward improving the UCC filing system.

A number of provisions of the revised Article 9-5 remain essentially the same, including the five-year lapse date, the six-month continuation window, the basic content of financing statements, and realty-related filing rules. These provisions are not discussed in this chapter. Reference to “filing office” in this article means the central filing office for each state that has enacted new Article 9-5.

Four New Fundamental Principles

The actual functioning of UCC filing systems today is almost completely ignored in the language of Article 9-4. As a result, many different variations of UCC systems exist for filing and searching among the states today. More importantly, from both a legal and administrative point of view, Article 9-4 and the UCC systems that have grown up under it favor filers who make mistakes over searchers—even those searchers who don’t make mistakes—and have caused litigation resulting in contradictory decisions. In order to redress these inconsistencies and inequities, the new Article 9-5 alters the principles behind UCC filing systems. The three new, fundamental principles involve

- (1) Rebalanced Responsibilities of Filers (Do No Harm) and Searchers (Determine Effectiveness)
- (2) Modified Role of Filing Offices—Full Disclosure and Rejection Criteria
- (3) Media Neutrality—No Signatures
- (4) Debtor Empowerment

(1) Rebalanced Responsibilities of Filers (Do No Harm) and Searchers (Determine Effectiveness)

Proposed Article 9-5 rebalances in a more equitable and definable manner the relationship between and responsibilities of (a) financing statement filers (b) subsequent searchers.

(A) Filers

Under the prior Article 9-4, what one commentator (Carl Ernst) has called in the past “dumb filers” have gotten too much help (1) from filing offices that have helped correct filer errors by rejecting what the offices “think” are legally insufficient filings; and (2) from courts that have let filers, who have provided insufficient notice by submitting faulty filings, off the hook for their errors. This has resulted in continued ignorance of the requirements of the Code, causing bad filing habits to go uncorrected and unpunished.

The new Article 9-5 is purposely not so kind or forgiving. Effectively, the act says that the time has come for filers to grow up and be responsible for meeting their legal responsibilities. These responsibilities include getting the debtor name right, completing forms properly, and filing changes to financing statement information accurately and timely. If filers cannot get those basic requirements right, it is not the responsibility of filing offices, courts or subsequent searchers to bail them out.

(B) Searchers

Under interpretations of the prior Article 9-4, searchers have had to jump through too many hoops to find active filings. Bankruptcy trustees, potential secured parties and their agents (the search companies), UCC database providers, and filing offices themselves have had to come up with concepts like “flexible searching,” “similar name lists,” and “soundex search logic,” to meet something called the “reasonably diligent searcher” standard.

The UCC drafting committee chose to eliminate all this costly puzzle solving on the part of searchers in favor of a simple rule in the Article 9-5: the searcher has only to (1) get the debtor name right, just like the filer must, and (2) review filings found in a search for legal sufficiency and effectiveness.

(2) Modified Role of Filing Offices—Full Disclosure and Rejection Criteria

In order to assure that this rebalancing is properly maintained in every filing office, it is necessary to modify significantly the role of the filing office in administering Article 9-5.

Under Article 9-4 some legal issues, and virtually all administrative details of the UCC system, were left to the discretion of the filing office, without even a requirement to explain to the users of the system how it operates in that office. Under Article 9-5,

- (1) responsibility for the interpretation of the legal issues of effectiveness and sufficiency of filings are left for filers and searchers to understand and interpret, and
- (2) administrative functions are standardized by statute, backed up by official, written administrative rules.

The Full Disclosure Concept

In order to keep responsibility for legal interpretation with filers and searchers, two conditions are necessary:

- (1) specific rules must be stated for acceptance or rejection of filings, and
- (2) searchers must be able to review all filings that have not lapsed. These two conditions are met by what is called a **full disclosure UCC system**, which is fundamental to proposed Article 9-5.

A full disclosure UCC System under proposed UCC Article 9-5 is one that

- (A) accepts all filings except those that are required by statute to be rejected,
- (B) attaches all subsequent filings as “records” to the initial financing statement by filing number, and
- (C) maintains debtor names on a searchable index of all financing statements that have not lapsed, including terminated filings.

(A) Rejection Criteria

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The kinds of filing errors that will cause rejection are the first part of the definition of full disclosure. The principal considerations for the UCC drafting committee in identifying reasons for rejection were

- (1) whether rejection or failure to reject will do any harm (known as the “do no harm” principle) to anyone who subsequently searches the index, and
- (2) whether the rejection can be determined objectively (meaning, these days, “by computer logic”).

A list of the permissible reasons for rejection appears in the table below.

(B) “Records”

Change filings, continuations and terminations, all of which are defined as forms of amendment, are generically called “records” in Article 9-5. To our knowledge, all central filing offices except Colorado already attach subsequent filings to the initial financing statement in the way contemplated under the full disclosure concept. However, a change in the way recorders index assignments will be necessary to bring their grantor/grantee indexes in conformity with Article 9-5 as explained below

(C) Searchable Index of Debtor Names

This indexing requirement is essentially no different from the design of

- (1) virtually all existing UCC filing office UCC systems—except in its treatment of terminations—and
- (2) virtually all existing recording office grantor/grantee indexing systems—except in the handling of assignments.

(1) Handling Terminations in UCC Filing Offices

Article 9-5 considers whether a termination is effective against an active filing to be a legal issue, not an administrative one as it is handled by UCC administrators today under Article 9-4. Therefore, **UCC systems will be required to maintain terminated filings on their debtor index until lapse**. It has been observed that this will mean more work for searchers in determining which filings are effective. Taken within the context of the savings to searchers in puzzling out debtor name variations and the savings in litigation costs due to an improved UCC filing system, this trade-off will be more than acceptable to the secured transaction community once these fundamental principles of the proposed Code are properly explained to and understood by them.

Of course, index entries for terminations of realty-related filings have always remained on the grantor/grantee indexes of recording systems.

(2) Handling Assignments of UCC Filings in Recording Offices

Section 9-519(c)(1) requires central UCC filing offices to index financing statements and records amending them “in a manner that associates with one another an initial financing statement and all filed records relating to the initial financing statement.” Although this language does not refer to recording offices, grantor/grantee indexes still meet this requirement to the extent that debtor names (and record owner names) are indexed as grantors, thereby associating all related filings by that name.

The specific language applicable to recording offices is in Section 9-519(d)(1) which says that financing statements—which include amendments under new Article 9—must be indexed “under the names of the debtor and of each owner of record...” However, many recorders index assignment statements only by assigning secured party (assignor) as grantor and assignee as grantee.

The argument that the debtor is not a party to the assignment and therefore should not be indexed is not controlling for recorders. As the California Recorders' Document Reference Manual, “Introduction to Indexing,” states,

“In most cases, it is left to the discretion of the recorder to determine the appropriate parties to index. The majority of documents relate to real property. **The property owner should always be identified and is always one of the parties that is indexed.**”

All recording offices should therefore add this indexing directive to their procedures:

When indexing a UCC assignment, enter as grantor all of the following named parties: debtor(s), recorder owner(s) and assigning secured party(ies).

(3) Media Neutrality—No Signatures

UCC filings do not require signatures under Article 9-5. This should encourage filing offices to offer, and filers to use, electronic filing methods.

The input (filings) and output (search results) in all but a few UCC systems today are 100% paper based. Electronic filing as an option, for example, is in its infancy. In Article 9-5, all references to the use of paper for filings or search results have been replaced with the term “communicate,” defined in 9-102(a)(18), meaning in part to “...transmit a record by any means...” In regard to filings, 9-516(b)(1) stipulates that the filing office can authorize the acceptable “method or medium of communication” for that office. In regard to search results, 9-523(b) stipulates that the filing office “shall communicate” the results (in a form useable by the requester, one assumes).

Authentication

The elimination of the signature requirement on UCC filings does not mean that signatures have been eliminated in secured transactions involving personalty. However, the concept of “signature” has been extended to clear up some old misconceptions and to prepare for electronic commerce as well.

One of the problems with Article 9-4 is that the term “signature” was not defined. As a result, for example, filers have not been using the electronic filing system in operation at the Texas secretary of state’s office for two years now because they are afraid that some court will declare ineffective these electronic filings since they lack a traditional “signature.” In new Article 9, the undefined term “signature” has been replaced by the defined term “authentication” defined at 9-102(7), which has a broad meaning to include electronic signatures as well as marks, symbols and other non-traditional methods of saying “I am a party to the contents of this document.”

Filing Safeguards

As noted in the chapter “Real Estate and the Uniform Commercial Code, under UCC law, **notices of agreements** are filed, whereas, under real estate law, **original real estate documents** are recorded. The underlying transaction to a UCC filing is an agreement between the debtor and secured party—usually a “security agreement”—which the UCC filing merely summarizes. This underlying agreement is not only required to be authenticated to be valid, but also new Section 9-509(a)(1) states that UCC filings are only effective if “the debtor authorizes the filing in an authenticated record;...” Just because there is a UCC filing on record has never meant that there is in fact a real transaction behind it. The determination of the facts behind, and effectiveness of, any filing continue to be the responsibility of the searcher.

As a recorder, you are sensitive to the issue of safeguarding the recording system against misuse. For example, under real property law you review each document in order to determine that it contains a legible, complete acknowledgment of each signature to the transaction. In this case, however, you are looking at the original document, which permits you to make a reasonable judgment about the content of the transaction. You have no such assurance when you review a UCC filing form. In fact, as mentioned above, the statute limits your review of the form to specifically identifiable rejection criteria.

The real, new safeguard to misuse of the UCC filing system is the same as the safeguard that recorders have always had in place—a system of indexing that fully discloses all documents involving a named party. The only difference under new Article 9-5 is that recorder indexing systems leave all filings on the index forever whereas UCC filing systems delete the filings from the index after the financing statement has lapsed. According to the full disclosure principle, (1) secured parties are protected from fraud and error because even if a wrongful termination is filed, their financing statement will still appear in the index, and (2) searchers are protected from fraud and error for the same reason since they will see on the index any filing that have not lapsed.

The issue of whether fraudulent filing of UCC forms should be criminalized is left outside the UCC.

(4) Debtor Empowerment

There are times under the prior Article 9-4 that debtors are powerless to fix errors in the records of filing offices without a long and arduous process of going through the courts. Article 9-4 does not contain any procedure to deal with the following situations, for example:

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- (a) Debtor cannot legally file a termination when she has paid off a secured transaction, but the secured party is out of business.
- (b) Debtor has no way of deleting a filing submitted by someone with malicious intent who is not an actual secured party.

New Article 9-5 addresses this problem by giving each debtor the explicit right to file a correction to a financing statements that she believes to be inaccurate 9-518(a) or which should be terminated 9-509(c)(2).

As noted above, secured parties are protected by the full disclosure indexing system from fraudulent terminations by debtor or others.

Conclusion

New Article 9-5 contains many provisions that will change the respective duties and responsibilities of central filing offices, recording offices, filers, searchers, and other interested parties. All parties will benefit from more precise language and more comprehensive, standardized administrative rules and national standard forms.

To summarize:

(1) Filing Offices

Filing offices will be constrained to administering Article 9-5 rather than interpreting it. The addition of responsibility for cooperation among central filing offices nationally in the promulgation of administrative rules will lead to more national uniformity, greater efficiency and less litigation. The acceptance of the national standard forms by all recorders will also assist in achieving the same goals.

(2) Filers

Filers will be held to a higher standard of due diligence in the preparation of UCC financing statements and amendments thereto, while at the same time they will receive less “help” from filing offices because of the explicit constraints on rejection of sub-par filings. However, filers who follow the requirements of prior law today have no reason for concern.

(3) Searchers

Searchers will be held to a lower, more reasonable standard of due diligence than many courts have placed on them under the prior Article 9-4 with respect to requests for UCC searches. As a result, a “reasonably diligent searcher” will only be required to (1) get the debtor name correct and (2) to search the official debtor index using the filing office’s search logic. In addition, under the new full disclosure concept, searchers will have responsibility to review search results to determine if purportedly terminated filings are validly terminated. This trade-off should be welcomed by searchers.

The remaining hidden lien problem will, however, cause searchers to continue to expand their searches beyond exact name.

(4) Bankruptcy Trustees

The proposed Article 9 will allow bankruptcy trustees to attack defective UCC filings with more confidence, especially those containing debtor name errors.

(5) Debtors

For the first time, debtors will have a mechanism for notifying searchers of UCC errors that could affect the debtors’ credit standing.

Chapter 5—Specific Provisions of New Article 9-5 and 9-7

This chapter summarizes the provisions of new Article 9-5 and related sections of Article 9 that apply to filing systems. For a complete copy of these sections of new Article 9, see the Appendices.

Definitions (9-102)

Each term used in Article 9 that does not have a readily understandable everyday meaning is explicitly defined in this section. Terms that have under prior Article 9 caused misunderstanding and misinterpretation, such as, “signature,” “financing statement,” and “certify.” The new Article 9 replaces signature with authentication, defines financing statement to include all subsequent filings related to the original financing statement, and replaces the term certify with communicate!

Place of Filing (9-301 through 307)

Generally, the proposed place of filing (perfection) for most forms of collateral is the state of incorporation/registration for registered entities, the place of business for other business entities (or chief executive office if the unregistered entity has more than one location) and the place of residence of individuals. The only instances in which the nature of the collateral determines place of filing are (1) for realty-related collateral (fixtures, timber and minerals) and (2) for certain types of agricultural liens (farm products).

Debtor Name (9-503, 506)

For a debtor name to be sufficient (and not “seriously misleading”), it must meet new, very specific rules. For registered entities such as corporations, for example, the name must be stated on a financing statement exactly as it appears on the public record for the state of incorporation (9-503) unless the name “would” be found in a search of the filing office index using the search logic provided by that filing office (9-506). The word “would” should comfort bankruptcy trustees as hypothetical judicial lien creditors, because judges should stop coming up with lame excuses to give equitable relief to “dumb” filers just because trustees were not potential secured parties who had done a search before bankruptcy occurred.

If the filing office makes an error when indexing the debtor name, however, a hidden lien is created, as discussed in the previous chapter. It is incumbent upon recorders to design indexing systems that reduce to a minimum level the chance for indexing errors.

Termination Treated as an Amendment (9-513)

What are today separately known as amendments, terminations and continuations are all redefined to be forms of amendments. Amendment records remain on the index until the related filing lapses in UCC filing offices and until forever on grantor/grantee indexes in recording offices. Therefore, termination statements will no longer result in removal of the filing from the debtor index in UCC filing offices, placing an additional responsibility on the searcher to review these filings to make a determination whether they are in fact terminated. Since only 20-30% of filings are terminated rather than just being allowed to lapse, this responsibility is more than offset by the overall decrease in searcher responsibility under the proposed Article 9-5.

Searcher Responsibility (9-506)

To be protected as a future secured party against a previous filer who gets the debtor name wrong, a searcher is only required to get the debtor’s legal name correct on a search request because the “minor errors” section (9-506) specifically relieves the searcher of responsibility to search alternative names. In order to take advantage of this provision, however, the search must be conducted on the filing office database using the filing office search logic. This provision should resolve the confusion many courts exhibit in their opinions about whether a registered entity debtor name is sufficient.

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Searching for unregistered entities and individuals will still require some searcher ingenuity because there is no independent source from which to verify correct legal name. Additional due diligence may also be necessary to unearth hidden liens, as discussed in the previous chapter.

Debtor Rights (9-509, 518)

Debtors are given some rights under new Article 9-5. Section 9-509(c)(2) allows a debtor to terminate a filing if the secured party should have, but fails to do so. This provision has to be understood within the context of the full disclosure fundamental principle, that is, it is up to a later searcher who finds such a termination on the record to make her own legal determination whether the termination statement is properly filed and effective.

Section 9-518 gives a debtor the right, analogous to a consumer right under the Fair Credit Reporting Act, to place a statement of correction on the record when the debtor believes that information on a filing is “inaccurate or wrongfully filed.”

Secured Parties (9-503, 9-509, 9-510, 9-511)

New Article 9-5 clarifies three issues related to secured parties:

- (1) Only one secured party needs to be listed on a financing statement, even if there are in fact multiple secured parties. The listed secured party effectively acts as the representative of the other ones (9-503(d)).
- (2) If multiple secured parties are listed on a financing statement, an amendment by one applies only to that secured party and not to any others (9-509(d) and 9-510(a)).
- (3) “Secured party of record” is defined in 9-511.

Amendment Filing Requirement (9-512)

When filing an amendment, including a continuation or termination, the only identification required to attach the amendment to the original financing statement in a UCC filing office is the file number. Amendments filed in a recording office, on the other hand must include a number of additional details according to 9-512(a) Alternative B:

- (1) Debtor name(s) from original financing statement or from latest prior amendment.
- (2) Secured party name(s) of record.
- (3) Type of collateral (probably only required when there is a change from what is on original).
- (4) Description of real property to which filing is related.

Recorders must remember in reviewing amendment filings that,

The only reasons for which a UCC filing can be properly rejected are those enumerated in Section 9-516(b).

What Constitutes Filing/What May Be Rejected (9-516, 517, 520)

The prior Article 9-4 dismisses this subject with 24 words in 9-403(1), “Presentation for filing of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer constitutes filing.” New 9-516 basically keeps this concept, but then goes on to designate the **only** reasons for refusal to accept a filing by a filing office. The acceptable reasons for rejection stated in 9-516(b) are as follows:

Acceptable Reasons for Rejection

Type of Filing	Reason for Rejection
1. All	(1) Failure to submit by a method or in a medium acceptable to the filing office (2) Failure to include at least the amount of the correct fee (3) Content necessary to index is illegible (4) No secured party name and address (5) No last name for individual debtor, if applicable
2. All—realty related collateral	(1) Does not indicate that it is to be recorded in real property records ²
3. Original financing statement only	(1) No debtor name (2) No debtor mailing address* (3) No indication whether debtor is individual or organization* (4) No indication of type and state; or identification number ¹ (Indicate “none” if none) for registered entity*
4. Any amendment	(1) Illegible initial filing number, or none indicated (2) Filing has lapsed
5. Debtor name change amendment	No new debtor name
6. Amendment that adds a debtor name	(1) No new debtor address* (2) No indication whether debtor is individual or organization* (3) No indication of type and state; or identification number ¹ (indicate “none” if none) for registered entity*
7. Amendment that adds a secured party	No secured party name and address for new secured party
8. Correction statement	Does not indicate it is a correction statement Does not provide basis for correction
[Amendment in land recording row deleted]	
9. Assignment on an original financing statement or on a statement of assignment	No assignee secured party name and address
10. Continuation statement	Not filed within six (6) months before lapse date

Note 1—The identification number referred to here is not the federal employer identification number or social security number as under the prior Article 9 of some states, but rather the number assigned to the organization by the state government agency that creates the organization by accepting a filing of organizational documents or by issuing a certificate of organization.

Note 2—Although there are a number of special errors and omissions that can make a realty-related filing insufficient under 9-502(b), the only one that allows rejection is lack of the real property description.

As a recorder, you must be aware of three considerations when you reject a UCC filing:

- 1. Rejection of filings for any of these reasons is mandatory, except that rejection for the reasons marked with an asterisk (*) is optional.**
- 2. A filing that you accept even though it contains one of the enumerated defects is not going to be legally perfected, unless the errors it contains are among those marked with an asterisk (*) above or are minor.**
- 3. A filing that you reject for any reason not stated is still perfected, even though it does not appear in your index, except as against a good faith purchaser of the collateral under 9-516(d).**

See “Rejection Criteria” and “Hidden Liens” in Chapter 6 for discussion of the ramifications of these two facts. Note also that overpayment of fees is not a valid reason for rejection under new Article 9-5. (See chapter on “Optional Article 9-5 Language” for recommended wording.)

In addition, **any filing mis-indexed by a recorder is still effective** (9-517), protecting secured parties against your errors.

If a filing is rejected, the filing office has two business days from the date of receipt to return the filing with the reason for refusal (9-520(b)). Recording offices may be exempted from this provision through optional language, although the words are not provided in the model act. (See chapter on “Optional Article 9-5 Language” for recommended wording.)

Comment [CRE1]: This paragraph is incorrect. Recorder is allowed to reject as long as 9-512 Subsection (a) Alternative B is enacted.

Duration of Effectiveness and Continuation (9-515)

Under Section 9-515 filings are effective for five (5) years unless continued within six (6) months of lapse date, just as they are under prior Article 9-4 (except in Maryland—12 years, Puerto Rico—10 years and Arizona—6 years). The three exceptions to the five (5) year rule are given:

- (1) Transmitting utility filings remain effective until terminated (same as prior law).
- (2) Public finance and manufactured home transaction filings are effective for 30 years.
- (3) Mortgages effective as fixture filings are effective until satisfied (same as prior law).

Forms Acceptance and Forms (9-521)

All filing offices, including recording offices, must accept the national standard forms illustrated in Appendix VII.

Initial Financing Statement

Proper filing of an initial financing statement in a recording office requires two pages minimum, in addition to the usual data:

- (1) UCC financing statement item 6 must be checked, which states that the financing statement is to be filed in the real estate records, and
- (2) UCC financing statement addendum includes
 - (a) item 13, specifying the type of realty-related collateral,
 - (b) item 14, a description of the real estate, and
 - (c) item 15, the names and addresses of record owners if different from the debtors.

Amendment

Proper filing of an amendment in a recording office requires, in addition to the usual data,

- (1) entry of the date of the initial financing statement in addition to the file number in item 1a,
- (2) checking item 1b, which states that the amendment is to be filed in the real estate records,
- (3) entry of secured party name in item 9, and
- (4) entry of debtor name in item 10

Filing Office Operations (9-519 through 527)

In addition to the responsibilities we have enumerated above, the following provisions impact filing office operations:

- (1) The format of filing number assigned by each filing office is specified (9-519(b)). The format includes the date of filing, which is necessary because other sections of the law only require file number to be included on amendments. This requirement does not apply to recorders if optional 9-519(I) is enacted.
- (2) Rejected filings must be returned within two business days of receipt, and must indicate the reason for rejection (9-520(b)). There is no exemption from this requirement for recording offices.
- (3) All filing offices must accept the national standard forms (9-521(a) and (b)).
- (4) On request and within two business days, a filing office must perform searches and provide the resulting information or images of forms (9-523(c)). Recording offices may be optionally exempted from the two day requirement, but the language to accomplish this is not included in the model act.
- (5) Filing offices must also provide to the public, at least weekly, copies of the index and forms on file in all media used by the filing office (9-523).
- (6) Each filing office must adopt administrative rules to carry out the provisions of Article 9-5, after consulting with other filing offices that have enacted Article 9, and after consulting the model rules promulgated by the International Association of Corporate Administrators, which is the organization representing central filing officers nationwide (9-526). Optional language may be added to exempt recording offices from this requirement.
- (7) Each filing office must report periodically on the operation of its office, including details of its compliance with time limits stated in the act and details of any difference between its administrative rules and the model rules (9-527). Optional language may be added to exempt recording offices from this duty.

Transition Provisions—Part 7

New Article 9 will be introduced in most state legislatures in late 1998 and early 1999. In order to give all the state time to enact the legislation and to give the UCC administrators time to alter systems and programs, the transition period will encompass the full five year term of a regular UCC filing (6 years in Arizona and 12 years in Maryland unless they change to the national standard).

When a filing comes up for continuation, it will be continued under the new Article 9 in the new proper place of filing either as a continuation or as a special type of new financing statement under Sections 9-705 or 706. This transition rule will not impact realty-related filings.

Searchers will need to search in both the location determined by the prior Article 9 as well as the new Article 9 until June 30, 2006, assuming all states enact the model act with the proposed effective date of July 1, 2001.

A form of dual filing for certain types of new transactions may be in effect if not all states enact the new Article 9 effective July 1, 2001. For example, if equipment located in an “old Code” state is collateral for a loan to an entity registered in a “new Code” state, filing would be required in both states. Searchers will need to be aware of this possibility in determining where to search.

See Appendix IV for the actual language of Part 7.

Chapter 6—Issues For Recorders

During the ten year, ongoing process of developing the new Article 9, the following issues have been raised in various forums by recorders. The current status of each of these issues, and where appropriate the position of the Task Force, is as explained below.

1. National Standard Realty-Related Filing Form

The task force is considering whether to design UCC forms that are specifically geared towards the indexing needs of recording offices. If a decision is made to go forward, all state recorder associations will be included in the process.

2. Revenue Neutrality

Even though the operations of most recording offices are paid out of general funds and funded with considerably less than the fees that recorders collect on behalf of the county, town, parish or district, recorders still take seriously their responsibility for providing funds for local government operations. Therefore, there is a real concern in those states, listed in Appendix V, where certain types of filings will no longer be submitted to their offices.

This concern is especially significant in the following nine (9) states that still have dual filing systems under the prior Article 9. The chart indicates the fee applicable to a single debtor local UCC filing as of September 1998.

State	Basic Filing Fee
Arkansas	\$12.00
Massachusetts	10.00
Missouri	12.00
Mississippi	5.00
North Carolina	15.00
New York	7.00
Ohio	9.00
Pennsylvania	57.50
Virginia	10.00

The worst case total central/local fee for a one debtor financing statement in a dual filing state is \$69.50 in Pennsylvania. The success of the Pennsylvania local fee teaches that just about any fee, no matter how unreasonable, does not seem to have a negative impact on the number of secured transactions in a state. The matter of whether such outrageous fees are legal will be left to class action attorneys.

There are a number of ways that revenue neutrality can be achieved in states that still have dual filing or local farm-related collateral filing:

- (1) Increase central filing office fee and share increased with recording offices.
- (2) Increase recording fees to offset lost revenue.
- (3) Turn all UCC filing over to local filing offices under the administration of a central state system administrator.

Of course, any analysis of lost revenue should also take into account decreased costs and overhead associated with not having to deal with personalty filings, including the costs of employee training and system maintenance related to a separate UCC index, which is no longer required in any recording of local UCC filing office.

Annual Net Revenue Neutrality Worksheet

Many recorders do not keep detailed records that would allow direct computation of estimated reduction in fees from the elimination of dual filing or farm-related filing. Here is a convenient way to look at the numbers in a way that most offices can put together:

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Recorders' Guide to New Article 9-5

A. Total Number of UCC Filings	_____
B. Less: Realty-related Filings	_____
C. Net Reduction in UCC Filings	_____
D. Total UCC Fees	\$ _____
E. Average Fee (D/A) \$ _____	
F. Less: Realty-related Filings Fees (E*B).....	_____
G. Gross Loss in UCC Filing Fees (D-F)	\$ _____
H.: Less: Estimated Cost Decrease	_____
I. Net Revenue Decrease	\$ _____
J. Number of Real Estate Document Recorded	_____
K. Lost Net Revenue per Real Estate Document (I/J)	\$ _____

Item K is the amount by which your recording office would have to increase real estate document fees per document to make up the lost net revenue, if there is in fact any lost net revenue after considering reduced expenses.

If your state aggregates this worksheet data for all counties, you can then make the following computation of the amount by which central UCC filing fees would need to be raised to accomplish the same goal of revenue neutrality:

J. Aggregate Net Revenue Decrease (all recording offices)	\$ _____
K. Total Number of Central Office UCC Filings	_____
L. Lost Net Revenue per Central Office UCC Filing	\$ _____

3. Signatures on Forms

Recorders are used to reviewing signatures on documents. The lack of a signature on a document is unacceptable to all recorders today. However, recorders do understand that UCC forms are different from real property documents in that they do not require acknowledgment of signatures. New Article 9 takes this difference one step further. There is no requirement for signatures on any UCC form. As noted elsewhere this does not mean signatures are not required under the Code, but rather that the requirement applies to the underlying security agreement, not to the UCC notice form. Among the advantages to the elimination of signatures is the encouragement of efficient electronic filing in central filing offices.

As explained elsewhere in this Guide, safeguard are in place under Article 9-5 to protect all parties from fraudulent filings and from attempts to fraudulently terminate filings.

4. Rejection Criteria—Danger Zone For Recordors

As outlined above, Section 9-516(b) specifies the only acceptable reasons for a filing office to reject a filing. As part of effectuating the second fundamental principle of the new Article 9-5—Role of Filing Offices—this set of rejection criteria are specified with the purpose of reducing rejections to a minimum.

For example, the way Alternative A of new Article 9-516(a) reads, a filing office may not reject an amendment that fails to include the original debtor name. This presents less difficulty to central filing offices that administer UCC filing systems than it does to recording offices. For central filing offices in most states, the amendment will attach to the financing statement because their UCC filing systems, unlike recording office grantor/grantee indexing systems, attach by filing number. And, under subsection 9-519(b) the central office filing number will contain a check digit, making it more unlikely that an amendment will be applied to the wrong financing statement even though the debtor names are no longer compared by the filing office. However, a recording office cannot record an amendment without the debtor name. This problem is resolved for recording offices by choosing Alternative B for 9-512(a), as recommended in Chapter 7, “Optional Article 9-5 Language Pertaining to Recording Office Operations.”

The chart of acceptable reasons for rejection of a UCC filing include three that are given special treatment under 9-516(b)(5): the mailing address of the debtor, an indication of whether the debtor is an individual or an organization, and if it is an organization, the type, jurisdiction and/or identifying number of the organization or indication that there is none. According to 9-520(a), rejection for these reasons is optional for the recording office, but, according to section 9-338, a future secured party or purchaser is given priority “**to the extent that, in reasonable reliance upon the incorrect information.**”

For those recording offices that cannot accept overpayments, see the recommended language to add to 9-516(b)(2) in Chapter 7.

In addition, 9-520(a) requires rejection of continuation statements that are not within the six (6) month window. Recording offices generally do not make a determination about continuations because they do not compare one filing to another. Therefore, filers should not anticipate that an improperly filed continuation will be rejected by a recording office.

5. Too Much Money

As a recorder, you must be aware that if you reject a UCC filing because it is submitted with too much money you will have created a hidden lien. Yet many recorder are by law restricted from accepting overpayments.

See the chapter “Optional Article 9-5 Language Pertaining to Recording Office Operations” for language that will resolve this problem for you.

6. Hidden Liens

The Problems

There are four ways that a filing office can screw up badly in the process of accepting and indexing a filing under new Article 9-5:

- (1) It can reject a filing that it ought to accept.
- (2) It can accept a new financing statement and mis-index the debtor name.
- (3) It can accept an amendment and attach it to the wrong financing statement.
- (4) It can accept a filing and then lose it (fail to index it at all).

In all of these cases, there exists a hidden lien, since a search under the correct debtor name will not unearth the filing. The hidden lien may be effective against some actual or hypothetical parties, such as :

- (a) Subsequent secured party with same collateral,
- (b) Purchaser of collateral, and
- (c) Bankruptcy trustee

In case (1), Section 9-516(d) holds harmless the purchaser of collateral who diligently searches the index and fails to locate the filing, since it had not been accepted. (The onus is on the secured party to get the filing accepted by the filing office pronto.) A subsequent secured party however is at risk from the hidden lien.

In cases (2) and (3), Section 9-517 reads, “*The failure of the filing office to index a record correctly does not affect the effectiveness of the record.*” The same diligent purchaser mentioned above is **not** protected in this case.

Thus a purchaser who diligently searches the index and fails to locate a filing because the filing office wrongfully refused it is protected, while that same diligent purchaser is unprotected if that same filing office can't get its indexing right.

A subsequent secured party is also at risk in cases (2) and (3). (More on this result below.)

In case (4), it is not clear whether Section 9-517 applies. Does the phrase “*failure...to index...correctly*” include not indexing at all? It can be reasonably argued that treating this case according to the rule in 9-516(d) is more equitable than the rule in 9-517.

In all these cases, it appears that a secured party's hidden lien usually trumps both (1) a subsequent secured party

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with the same collateral and (2) a trustee in bankruptcy.

The Dangers

How dangerous is each of these filing office errors? Let's take another look at each one:

- (1) Under Section 9-520, UCC filing offices are required to reject filings within two business days of submission. Therefore, there will not usually be a long period of time during which the case (1) hidden lien exists, so it is highly unlikely that any other lender would be harmed by not knowing about the filing. Assuming your state has enacted the Task Force recommended version of 9-520, which makes your recording office exempt from the two day rule for turnaround of rejected filings, you still have an ethical responsibility to return rejections timely so that the secured party can correct and refile quickly. Although there is no responsibility placed on a recorder in this instance beyond stating the reason for reject when returning the filing, Bob Henderson, Director of Legal Records in Jefferson County, KY, has suggested a unique idea to avoid this type of hidden lien: add an item to the general index stating the debtor and creditor name, the type of document (e.g., UCC-1) and the reason for the rejection. (Such an approach might also be helpful to inform the public of real estate documents that have been received but not recorded.)
- (2) A mis-indexed filing—case (2)—may remain hidden on the UCC index for five or more years. New Article 9-5 is silent as to the liability of a recording office for mis-indexing a UCC filing. Since a subsequent secured party has no protection under the revised Article 9-5 against this type of error, it will still be necessary for the smart searcher to look for debtor name variations. In other words, the unreasonable “reasonably diligent searcher” standard is still alive and well to some extent under revised Article 9-5.
- (3) Attachment of an amendment filing to the wrong financing statement—case (3)—is an especially insidious error since the only party who can find it is the filer. This type of error can only occur in a UCC filing office, not in a recording office. If this error is perpetrated by the filer (entering the wrong original file number on the amendment), a subsequent secured party is protected because the amendment would be seriously misleading under Section 9-506. If, on the other hand, the error is caused by the filing office, the position of a subsequent secured party is compromised because, although the amendment is effective, there is no way a search, no matter how ingenious the searcher, will unearth the amendment.
- (4) If a filing is accepted, lost and not indexed—case (4)—the filer will not receive an acknowledgment. After a short period of time, it is reasonable to expect the filer to contact the filing office (with the canceled fee check in hand). The filing office will then be forced to determine that the filing was lost and will then, one assumes, accept a copy and enter it on the index. As in case (1), it is highly unlikely that any other lender would be harmed by not knowing about the filing.

Thus, in cases (1) and (4) only a short period of time will elapse between the error and the correction. The danger of an intervening secured party or bankruptcy trustee is miniscule. **In case (2) in a recording office, however, there is a real danger of affecting the position of a subsequent secured party, purchaser, or trustee because the error can remain on the records of the filing office until the original financing statement lapses.**

It may seem that filing office mistakes constitute an issue different from the first principle of Article 9-5, that secured parties must get debtor names right in the first place rather than placing the onus on searchers to be creative in finding misnamed filings. However, it is possible to give the secured party the information necessary to determine if the filing office has made a mistake.

Section 9-523 requires filing offices to send acknowledgements to filers, basically in the same manner as they do today. A growing number of central filing offices now send back (1) images of the form and (2) a print out of the information entered from the form.

If new Article 9-5 required the acknowledgment to include this information entered by the filing office, the secured party would then be able to compare this information to its filing, and to report any discrepancy immediately to the filing office for correction.

The print out from a recording office would highlight the names entered into the grantor/grantee index, With this disclosure in place, subsequent searchers can better rely on a search “under the debtor’s correct name, utilizing the filing office’s standard search technique” (9-506) to find all effective filings.

Would secured parties welcome this type of acknowledgment? If you consider that every secured party is also a searcher who wants the UCC index to be correct, there is every reason to believe that they will willingly approve the responsibility to check the acknowledgment for these two errors.

7. Liability of Recording Office

There are three areas of concern to recorders about liability for their actions with respect to UCC filings:

- (1) Failure to index a debtor name accurately,
- (2) Wrongful rejection of a filing for some other reason than those enumerated in 9-516(b).
- (3) Failure to reject a filing for one of the reasons enumerated in 9-516(b), and

It is reasonable to assume that in the first instance that the liability, if any, of a recording office is the same for UCC filings as it would be for real estate documents

Wrongful rejection is probably not a high-potential problem because the submitter can fix the problem and get the filing filed quickly. On the other hand, a filing that contains one of the critical errors but not rejected will remain on the record of the office until it lapses. If a bankruptcy trustee determines that the filing was not perfected because of the error, a liability issue may arise.

In addition, those recording offices that conduct searches for the public may also have a liability issue if the results of the search are for any reason not correct.

Our recommendation is to obtain from the Attorney General of your state an opinion regarding recorder liability under the statutes of your state.

8. Indexing

Recorders should be aware of two elements of indexing that have not been well defined in the past.

Record Owner Names

First, under both the prior Article 9 and the new one, it is necessary for a recorder to index all the debtor and record owner names from a financing statement. The first debtor name and possibly the first record owner name will appear on the first page of a UCC form. However, more debtors and record owners may be named on an attachment. Therefore, it is essential for the recorder to read the attachments for such names. The indexing of record owner names is an example where the grantor/grantee index contains the name of someone who is not a party to a document. The reason it is necessary to index the record owner name is so fixture collateral on the property of the property owner will be distinguishable by a searcher from the property of the owner. Under the new Article 9, the record owner names on an initial financing statement appear on the addendum form. Here’s an example of why record owner name indexing is important:

Let’s say that Tenant A leases an entire building from Owner B, and installs a telephone system throughout the building. Tenant A borrows \$100,000 from Bank C to buy the telephone equipment. Bank C files a fixture filing with your office, listing Tenant A as the debtor and Owner B as the record owner. Owner B goes to Bank D to get a new mortgage on the building. How does Bank C let Bank D know that Bank C has the telephone system as collateral for the loan to the tenant, and that the equipment, wires, etc., are not a part of the building? One of the ways Bank D will know that is from a search of the grantor index in the recording office because the recording office indexed the fixture filing under Owner B’s name.

Debtor and Record Owner Names on Statements of Assignment

Second, under new Article 9, it is required to index assignments by debtor name as a grantor in addition to the assigning secured party. This is necessary so that a searcher on debtor name can tell when an assignment is related to an initial financing statement. It is frequently impossible today (late 1998) in some recording offices to match

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an assignment to an original financing statement (or mortgage) using just the grantor/grantee index because of the way the grantor/grantee index is posted from statements of assignment.

A UCC filings is comprised of an original financing statement plus all the amendments, continuations, release, amendments, and terminations applicable to it. In a UCC system, all these forms are related by computer software based on the original filing number. In a grantor/grantee indexing system, most of these forms are also related, not by a number, but rather by the fact that the debtor and record owner names will be indexed from each form filed. Therefore, in most cases, a search on one debtor or record owner name will reveal all the filings that go together, with one exception—if your offices does not index the debtor or record owner name from a statement of assignment the “chain” of filings is broken.

In that case, how can you determine whether any given financing statement secured party has assigned the loan to another? Your only option is to sort through all the instances of the original secured party's name on the grantor index to see if one of those assignments is for the debtor name you are searching. If the original secured party is a large financial institution with lots of assignment filings in your office, you have no chance of ever finding the assignment.

But, some recorders may say, the debtor and record owner are not a party to the assignment, so they should not be indexed as grantors. It is not necessary for a party to fit the legal definition of grantor or grantee to appear in the index. The overriding consideration is whether a searcher will find the information on the index about transactions of a debtor. Consider that a record owner is not a party to a UCC transaction yet is indexed as a grantor for any transaction on which the record owner is identified—for the reasons given above.

Chapter 7—Optional Article 9-5 Language Pertaining to Recording Office Operations

In the previous chapter we summarized the provisions of new Article 9. A number of these provisions impact recorder operations. In some cases the new model act provides specific alternative language to make the statute match to recorder operations; in other cases optional language is provided or at least suggested, and in a few cases optional considerations for recorders are mentioned but no language is provided.

In this chapter we discuss the particulars of each of these provisions as they effect recording offices (not as they affect central filing offices), including suggested language where the model act does not provide it.

In General

1. A recording offices is referred to in Article 9-5 as “a filing office described in Section 9-501(a)(2),” which is “the office designated for the ...recording of a mortgage...”.
2. Where the statutory language indicates something like “filed [for record],” the bracketed language is said to be optional. The language choices given below are recommended for states that have the usual grantor/grantee index and which enter realty-related UCC filings into that index. If the state has some form of special “fixture” or other separate index, the recommended language will need to be altered to reflect that practice or procedure. Appendix VIII will contain state variations to the following recommendations.

Task Force Recommendation: In those states where the realty-related UCC filings are indexed in the grantor/grantee index, choose the optional terms “filed for record” and “filed or recorded” where they appear.

9-502 Contents of Financing Statement

Issue—Should type of collateral and description of real property be required on **all** filings, or just on initial financing statements?

The reference in 9-512(a)(2) Alternative B, the requirements of 9-502(b) would apply to amendments as well as initial financing statements. This would mean that amendments, including all assignments, continuations and terminations would be required to restate the collateral and include the property description. Also, there is no indication on the national UCC amendment form that such

Task Force Recommendation—

(a) Since the property description is attached to the original filing, there is no additional If it is desired to keep the requirement for property description with all filings, but

9-512 Amendment of Financing Statement

Issue 1—Choice of two alternatives for subsection (a)

Is the date of the initial financing statement to be required on an amendment? Alternative A does not require the date filed of an initial financing statement to be stated on an amendment. (Remember that under the New Article 9, the definition of amendment includes every type of subsequent filing (e.g., change, termination or continuation) related to an initial financing statement.)

Task Force Recommendation—If the recording offices in your state use an indexing system that requires date as well as filing (document, or book & page) number:

- (1) Choose Alternative B for subsection (a).
- (2) In Alternative B, choose “filed for record” for the reason stated above.
- (3) In Alternative B, delete the words “and time” unless recording offices in your state require stating time on a subsequent filing.

9-516 What Constitutes Filing; Effectiveness of Filing

Issue 1—9-516(b)(2) requires acceptance of a filing if the amount of the fee tendered is “equal to **or greater than** the applicable filing fee.” There is no requirement that a filing office return an overpayment. Separate statutes is

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some states or restrictions in local recording office systems may not allow acceptance of “greater than” fees. The problem for a recorder who ignores this provision is that the filing will still be effective under subsection 9-520(c) even though it has been rejected, thereby creating a hidden lien. On the other hand, it is likely that the filing will be refiled in a very short time, so the hidden lien will not be in existence long.

Task Force Recommendation—Leave the statutory wording as is. However, if recorders in your state feel obliged to change the language to exempt recording offices from having to accept overpayments, add the following to the end of 9-516(b)(2) before the “;”: “..., except if the filing office is one described in Section 9-501(a)(2), in which case only an amount equal to the applicable filing fee is not tendered”

Issue 2—9-520(a) requires rejection of item 9-516(b)(7) , a continuation filed outside the six (6) month window. Recording offices do not check for this.

Task Force Recommendation—No change recommended. There is no liability under the UCC for accepting a filing that should have been rejected under 9-516. This type of filing is not effective under 9-510(d), whether or not it is accepted by a recording office.

Issue 3—There is no requirement that an amendment contain the name of the debtor and/or record owner. However, upon the request of the Task Force, the instructions to the national standard amendment form have been changed to state that debtor and record owner name(s) are to be included on the amendment addendum form.

Task Force Recommendation—No change recommended. A filing submitted without a debtor and/or secured party name should be rejected.

9-518 Claim Concerning Inaccurate or Wrongfully Filed Record

Issue—Choice of two alternatives for subsection (b)

The issue is the same as in 9-512, but for correction statements rather than amendments.

Task Force Recommendation—If the recording offices in your state use an indexing system that requires date as well as filing (document, or book & page) number:

- (1) Choose Alternative B for subsection (b).
- (2) In Alternative B, choose “filed for record” for the reason stated above.
- (3) In Alternative B, delete the words “and time” unless recording offices in your state require stating time on a subsequent filing.

9-519 Numbering, Maintaining, and Indexing Records; Communicating Information Contained in Records

Issue 1—Choice of two alternatives for Subsection (f):

Both alternatives require indexing by debtor name. In addition, alternative A assumes that the file number is indexed and, being unique for every filing, is itself adequate to search the index by filing number. Alternative B assumes that both the filing number and date are needed to search the index by number.

Task Force Recommendation:

- (1) Choose Alternative B as it would not require recording offices to change their numeric indexing methods, whatever they may be.
- (2) In Alternative B, delete the words “and time” since the time of acceptance is never an element of a search.
- (3) In Alternative B, choose “filed or recorded” for the reason stated above.

Issue 2—Addition of Subsection (i)

This optional subsection excludes recording offices from application of subsections (b) and (h). The first subsection (b) requires a specified format of file number, and the second (h) requires indexing and other tasks enumerated in 9-519 to be performed within two days.

Task Force Recommendation: Add subsection (i) to exclude recording offices from these requirements. The filing number requirement is intended to create more standardization at the central filing office level among the states. These filing offices do not follow the typical book & page format of recording offices. Any constrains on turnaround time in recording offices should be dealt with by recording statutes, not the UCC statute which only affects 1-2% of recording office intake.

9-520 Acceptance and Refusal to Accept Record

Issue 1—9-520(b) give a filing office two business days after receipt of a UCC filing to reject it.

Task Force Recommendation—Add a subsection (e) stating, “A filing office described in Section 9-501(a)(2) is not required to conform to the two business day constraint specified in subsection (a)”.

Issue 2—Can a recording office decide not to refuse filings that call for rejection under 9-516(b)?

Two items are mentioned under the discussion of 9-516 above, the overpayment problem and the six (6) month window problem. The recommendations for each are noted there. There is no statutory requirement that obliges a recording office to reject any filing it wishes to accept. **The legal sufficiency of the filing does not appear to depend on whether it is accepted by a recording office.**

Task Force Recommendation—No change required.

9-522 Maintenance and Destruction of Records

Issue—Choice of two alternatives for Subsection (a):

In conjunction with the requirements of 9-519 above, both alternatives require making indexes by debtor name and filing number available for at least one year after lapse date. The difference between the two alternatives is that Alternative B accounts for an indexing system in which the access to a record by filing number also requires date to be entered., whereas alternative A assumes that the file number is indexed and, being unique for every filing, is itself adequate to search the index by filing number. Alternative B assumes that both the filing number and date are needed to search the index by number.

Task Force Recommendation:

- (1) Choose Alternative B as it would not require recording offices to change their numeric indexing methods, whatever they may be.
- (2) In Alternative B, delete the words “and time” since the time of acceptance is never an element of a search.
- (3) In Alternative B, choose “filed or recorded” for the reason stated above.

9-523 Information From Filing Office; Sale or License of Records

Issue—Should recording offices be required to perform searches, and if so, should they be required to perform them within two business days of receiving the request? Separately, should recording offices be required to sell UCC filing indexes and record copies in bulk?

The great majority of recording offices do not perform searches, but rather make the indexes and records available to the public in some form such as remote online access (including more and more through the Internet) and in-office terminals.

Any separate requirement to sell indexes and copies of UCC filings alone makes little sense because they are intermingled with real estate documents. Therefore, this issue should be deferred to real estate law.

Task Force Recommendation—

9-525 Fees

Issue—Do UCC fees apply to realty-related UCC filings?

Task Force Recommendation—Whether the UCC fee schedule or the real estate fee schedule is used in any state is generally a settled issue in that state, and therefore need no further clarification in the new Article 9.

9-526 Filing Office Rules

Issue—Does this section apply to recording offices?

This section requires the inserted agency name to promulgate and publish its rules for accepting, indexing and searching UCC records.

Task Force Recommendation—Make sure that the designated agency is the central filing office.

9-527 Duty to Report

Issue—Does this section apply to recording offices?

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This section requires the inserted agency name to report certain information regarding operation of the UCC system in the state to the governor or legislature.

Task Force Recommendation—Make sure that the designated agency is the central filing office.

Chapter 8—Reading the National Standard UCC Forms

[Note—While reading this chapter, have in front of you the national standard forms illustrated in Appendix VII]

This chapter explains the fields on each of the four standard forms. These forms are required to be accepted in addition to any forms promulgated for your state under Section 9-521. The intention of this section is to override the proliferation of forms by state during the past 20 years by assuring that the national standard forms will have national acceptance. In fact, as of the end of 1998, most state central filing offices accept as standard the interim version of the national financing statement. The interim version of the national amendment form has just been approved, so it is too early to tell yet whether it will also gain that level of universal acceptance at the state level. In a number of states, led by the big four of California, Texas, New York and Florida, the interim national financing statement is also accepted as standard by most counties as well.

The four forms are:

1. National UCC Financing Statement UCC1
2. National UCC Financing Statement Addendum UCC1Ad
3. National UCC Financing Statement Amendment UCC3
4. National UCC Financing Statement Amendment Addendum UCC3Ad

The procedure for indexing these forms in a grantor/grantee index is summarized at the end of this chapter.

General Design

Substantial space has been set aside at the top of all the forms for recording information. Also, both the financing statement and include places for the a contact name and telephone number and for the return-to information. The bar code is for use with certain imaging equipment. The fields for entry of names are designed to assist filers in getting names right for proper entry into your indexing system, and to assure that filers include both information required by statutes, as well as other information useful to later searchers.

There is no space for signatures as they are no longer required under Article 9.

Each form has written instructions that refer to each specific field to guide the preparer. You should read these for details about what is expected to be in each field. In the next sections will be outlined specific information about various fields that is of particular interest to recorders.

National UCC Financing Statement UCC1

1/2 Debtor Name Information—Separate fields are provided depending upon whether the debtor name is for an organization or individual. The individual name boxes are designed to help the preparer get the name right for indexing. Recorders should be able to enter the names just as they appear without having to guess at which name is the individual's last name.

Although the taxpayer identification number is not a required field under new Article 9, a box has been left for it in case the preparer wants to use it to help identify the debtor.

The information to the right of the taxpayer identification number represents one of the most significant changes regarding debtor names in the new Article 9. If the debtor entity is an organization, section 9-516 allows you to reject a financing statement that does not have items 1e, 1f or 1g filled in (although the financing statement is still legally sufficient if the fields are not filled in). The importance of these fields arises from the principle in new Article 9 that financing statements are to be filed (except in the case of realty-related collateral) where the debtor organization is registered or domiciled. These fields indicate

(1e) Type of Organization—There are many different types, such as, corporation, LLC, LLP, general partnership, trusts, etc.

(1f) Jurisdiction of Organization—This is the state where the organization is either registered, as in the case of a corporation or LLC, or domiciled, as in the case of a trust of general partnership.

(1g) Organization ID #—This is the registration number, if applicable, for the entity. The instructions indicate that the number should be preceded by the state abbreviation to make the state of registration crystal clear.

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3 Secured Party Names—These fields are set up the same way as the debtor name fields to assist in distinguishing clearly between individuals and organizations.

4 Collateral Box—The collateral description goes here. Recorders should expect to find collateral that indicates fixtures, minerals or timber, or an overall statement like “All assets.”

5 Alternate Designation—Not all transactions covered by the UCC are loans between a secured party and a debtor. These fields give the filer an opportunity to characterize other relationships to inform later searchers.

6 Record in Real Estate—This box should be checked for all recording office filings.

7 Search Request—This box is included as a convenience to filers in filing offices that allow a search to reflect to be ordered after the financing statement is indexed.

8 Optional Information—This area is set aside for use by the filer. It may contain internal reference number, bar codes, or anything else useful to the filer.

National UCC Financing Statement Addendum UCC1Ad

The addendum is designed to provide a matching format on which to place information that for some reason does not fit on the financing statement itself. Items on the addendum include, by number:

9 First Debtor—This is to identify that the addendum is related to the financing statement.

10 Miscellaneous—Use includes a place for information necessary in the states of Florida, Alabama, Tennessee and Maryland regarding taxes on certain types of secured transactions.

11/12 Additional Debtor and Secured Party Names—The boxes are exactly the same as those on the UCC1. Use of this form for multiple debtors and secured parties assures the preparer that she has completed all the necessary information about the entity. For the recorders point of view, use of this forms makes clear what debtors and secured parties are to be indexed. It is contemplated that multiple addendum forms will be used if there is more than one extra debtor or secured party.

13/14/15 Realty-Related Filings—Here is where recorders will find the type of filing (13), the property description (14)—which may point to another attachment, of course—and record owner names (15)—which must be indexed along with debtor names as grantors.

16 Collateral Description—This is space if the filer runs out of space on the UCC1.

17 Trust/Estate Entities—This series of check boxes is intended to help searchers to determine certain special entity types.

18 Special Transaction Types—Transmitting utilities, manufactured home transactions and public finance transactions are accorded special status under Article 9.

National UCC Financing Statement Amendment UCC3

If your are in a state like California where the change form is designated UCC2 and the search form is designated UCC3 today, note that the new amendment form is designated UCC3. There is no provision in the new Article 9 for acceptance of a standard search request form. Section 9-523 merely specifies that filing offices must make available search information. It is anticipated that the Secured Transaction Section of the International Association of Corporate Administrators, which has responsibility for promulgating model central filing office procedures under new Article 9, will design a national standard search request form for acceptance by all states.

1a Initial Financing Statement File #—In those states that have chosen the alternate wording for recording offices recommended in chapter 7, this field would include not only the file number, but also the original filing date. The field may also include the name of your recording office.

1b Debtor/Record Owner Names—The instructions state that debtor **and** record owner names should be listed in item 13 of the addendum (see below), depending on the circumstances.

The “Note” below instruction 1b—It states that filers may indicate other amendments on a continuation amendment.

Task Force Recommendation—The task force believes it would be appropriate to charge one fee and to index the filing as a UCC continuation, no matter whether or not other boxes are checked on the amendment.

Types of Amendments—Check the appropriate box for the type of amendment:

1. Termination—Note that there is no such thing as a full release.
2. Continuation
3. Assignment—Assignor is in item 9 and assignee is item 7a or 7b. Collateral description may also appear in item 8.
4. Name/address amendment—Type of change depends on which combination of boxes is checked
→Debtor or secured party, and
→Change or delete or add
For change, 6 contains old name and 7 contains new name and/or new address and/or organizational information; for delete, 6 contains old name and 7 is blank; and for add, 6 is blank and 7 contains new name and address. If add is a debtor, organizational information in 7(e)-(g) is also required.

8 Collateral Amendment—Adds, deletes and changes to collateral are stated here.

9 Authorizing Party—Name of organization or individual authorizing the amendment. Usually this is where you will pick up the name of the secured party for indexing. Additional secured parties are listed on the addendum in item 13. However, there are three rare circumstances in which this field does not contain that required information:

- (1) If the amendment adds collateral, the instruction says to enter the debtor name,
- (2) if the amendment adds a new debtor, the instruction says to enter the debtor name, and
- (3) if a debtor wishes to record a purported termination.

In all these cases, you can recognize this as an exceptional filing because the box is checked. The secured party name will be found, per the instructions, on the addendum in these cases.

10 Optional Information—This area is set aside, like item 8 on the financing statement, for use by the filer. It may contain internal reference number, bar codes, or anything else useful to the filer.

National UCC Financing Statement Amendment Addendum UCC3Ad

The addendum is designed to provide a standard, matching format on which to place information that for some reason does not fit on the amendment itself.

11/12 References—These items repeat the filing number, date in states following the chapter 7 recommendations, and first authorizing party name to relate the addendum to the amendment.

13 Blank Space—As noted above, this space may include,

- (1) a list of the debtor names repeated from the initial financing statement,
- (2) a list of record owner names repeated from the initial financing statement,
- (3) a list of additional assignors (item 9),
- (4) a list of additional authorizing parties (item 9),
- (5) a list of secured parties and other debtors and record owners if the name in item 9 is a debtor.
- (6) a list of new debtors (item 7), or
- (7) A continuation of the list of collateral to be deleted, added, changed or restated (item 8)

It is hoped that each such list will be clearly identified so that the recording office can properly index the filing.

Correction Statement

In addition to the four types of amendments included on the form discussed above, there is another type of amendment, the correction statement, allowed under section 9-518, to be filed by any person who wishes to place on the record a statement regarding a purported “inaccuracy” in a financing statement or to state that the financing statement was “wrongfully filed” in the first place. (As with all UCC filings, it is up to the searcher to determine whether a filing is legally effective, based on a review of all the facts surrounding the filing, including correction statements.)

This special amendment might be used, for example, by a government official against whom purportedly fraudulent UCC financing statements have been filed to indicate that the

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There is no form promulgated under new Article 9 for a correction statement. The basic requirements for the statement are that the filing:

- (1) identify the filing number (and date if applicable) of the original financing statement,
- (2) indicate that it is a correction statement, and
- (3) contain a statement regarding the person's belief as to the inaccuracy or wrongful filing of the referenced financing statement.

A correction statement submitted to a recorder in a state where Alternative B to 9-518 is enacted must also contain:

- (4) a listing of the collateral from the original financing statement,
- (5) an indication that the statement is to be "filed for record in the real property records," and
- (6) a description of the real property involved.

Remember that of these six required elements, only omission of item (1), (2) or (6), or submission of too little filing fee, allows rejection of the statement.

Task Force Recommendation: It is recommended that fees charged for correction statements be the same as for other amendments.

Summary of Recording Office Indexing Rules Using New National Forms

Item numbers on forms are indicated.

Form	Grantors	Grantees
Original Filing		
Initial Financing Statement	First debtor name (1a or 1b) Second debtor name (2a or 2b)	First secured party name (3a or 3b)
Financing Statement Addendum (or attached list)	Additional debtor names (11a or 11b) Record owner names (15)	Additional secured party names or assignors (12a or 12 b)
Amendment Filings		
Termination	All debtors and record owners (13)	Secured parties (9a or 9b and 13)
Continuation	All debtors and record owners (13)	Secured parties (9a or 9b and 13)
Debtor Name add	Debtor name (7a or 7b)	Secured parties (9a or 9b and 13)
Debtor name delete	Debtor name (6a or 6b)	Secured parties (9a or 9b and 13)
Debtor name/address change	Old debtor name (6a or 6b) and New debtor name (7a or 7b)	Secured parties (9a or 9b and 13)
Collateral change	All debtors and record owners (13)	Secured parties (9a or 9b and 13)
Assignment	All debtors and record owners (13), and assignor secured party (9a or 9b and 13)	All assigned-to secured parties (7a or 7b and 13)
Item 9 box checked	Debtor name (9 and 13) and record owner names (13)	Secured parties listed in 13

The two less than obvious indexing situations, except for the rare item 9 case, involve debtor name changes and assignments. The reason that debtors and record owners are indexed as grantors is explained in Chapter 6 under Issue 8. The reason for including both old and new debtor names as grantors when a debtor name changes is so that a searcher can find the filing under either name. Also, logically and as a matter of practice, the secured party is always the grantee on a UCC filing.

Chapter 9—Filing Operations Under Part 9-5

This section will recommend a list of standard operating procedures to be followed by recording offices under new Article 9-5, including indexing standards, stamping, and rejection procedures, including standard rejection forms.

Indexing

The following indexing is required for each type of form received:

- (1) Initial financing statement
 - (a) All debtor names, as given¹, as grantor
 - (b) All record owner names, as grantor, and
 - (c) All secured parties, as grantee

The record owner names and additional debtor names are stated on the national addendum form.

- (1) Assignments

- (2) Other Amendments

Note 1—"Debtor names as given" means not to guess about the form of a name. For example:

(1) "Ernst, Carl R." is entered as given, but if the filer states the name as "Carl R. Ernst" it is entered in that order, not reordered, and (2) "UCC Guide DBA Ernst Publishing" is enter as one entry, not split up as two.

It is the responsibility of the filer to get it right, not a recorder to guess what the filer meant.

For those states where consumer goods and farm related collateral still require filing locally, recording office rules will be explained.

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Chapter 10—Searching Operations Under Part 9-5

This section will recommend a list of standard procedures for those recording offices that perform UCC searches.

Appendix I—Article 9 Part 1—Definitions

In order to understand how terms are used in Part 9-5, a recorder needs to know their definitions. Part 9-1 contains most of these definitions. The most important definitions to Part 9-5 have been highlighted and are quoted in this chapter. Some definitions which may seem to be obvious are quoted here so that this Guide can be used to train new recording employees in the administration of UCC filings a recording office receives.

The Part starts with the heading,

SECTION 9-102. DEFINITIONS AND INDEX OF DEFINITIONS.

(a) In this article:

Each definition is numbered in alphabetical order as noted, but we have put them together in a way that is more useful for discussion of their affect on your operations into the following categories:

1. Elements of Secured Transactions—Definitions of terms like “financing statement” that are used to describe these transactions.
2. Filing Office Operations—Definitions of terms used to describe filing office operations.
3. Parties to a Secured Transaction—Definitions of terms like “debtor” that describe those involved in a transaction.
4. Types of Collateral—Definitions of terms used to describe what “collateral” means and the categories of collateral.
5. Collateral Description

1. Elements of a Secured Transaction

(5) "Agricultural lien" means an interest, other than a security interest, in farm products:

(A) which secures payment or performance of an obligation for:

- (i) goods or services furnished in connection with a debtor's farming operation; or*
- (ii) rent on real property leased by a debtor in connection with its farming operation;*

(B) which is created by statute in favor of a person that:

(i) in the ordinary course of its business furnished goods or services to a debtor in connection with a debtor's farming operation; or

(ii) leased real property to a debtor in connection with the debtor's farming operation; and

(C) whose effectiveness does not depend on the person's possession of the personal property.

(7) "Authenticate" means to:

(A) sign; or

(B) execute or adopt a symbol, or encrypt a record in whole or in part, with present intent to:

- (i) identify the authenticating party; and*
- (ii) adopt, accept, or establish the authenticity of a record or term.*

Comment—Article 9-5 does not require authentication of any financing statement, which is just a notice. The underlying security or similar agreement must of course be properly authenticated.

(20) "Consignment" means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:

(A) the merchant:

(i) deals in goods of that kind under a name other than the name of the person making delivery;

(ii) is not an auctioneer; and

(iii) is not generally known by its creditors to be substantially engaged in selling the goods of others;

(B) with respect to each delivery, the aggregate value of the goods is \$1,000 or more at the time of delivery;

(C) the goods are not consumer goods immediately before delivery; and

(D) the transaction does not create a security interest that secures an obligation.

(24) "Consumer-goods transaction" means a transaction to the extent that:

(A) an individual incurs an obligation primarily for personal, family, or household purposes; and

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(B) a security interest in consumer goods or in consumer goods and software that is used, licensed, or bought for use primarily for personal, family, or household purposes secures the obligation.

(26) "**Consumer transaction**" means a transaction to the extent that (i) an individual incurs an obligation primarily for personal, family, or household purposes, (ii) a security interest secures the obligation, and (iii) the collateral is held or acquired primarily for personal, family, or household purposes. The term includes a consumer-goods transaction.

(27) "**Continuation statement**" means an amendment of a financing statement which:

(A) identifies, by its file number, the initial financing statement to which it relates; and

(B) indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

(30) "**Document**" means a document of title or a receipt of the type described in Section 7-201(2).

(39) "**Financing statement**" means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

Comment—See the definition of "record," item (69) below.

(40) "**Fixture filing**" means the filing of a financing statement covering goods that are or are to become fixtures and satisfying the requirements of Section 9-502(a) and (b). The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.

(50) "**Jurisdiction of organization**," with respect to a registered organization, means the jurisdiction under whose law the organization is organized.

(55) "**Mortgage**" means a consensual interest in real property, including fixtures, which is created by a mortgage, trust deed, or similar transaction.

(56) "**New debtor**" means a person that becomes bound as debtor under Section 9-203(c) 203(d) by a security agreement previously entered into by another person.

(64) "**Proceeds**" means the following property:

(A) whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;

(B) whatever is collected on, or distributed on account of, collateral;

(C) rights arising out of collateral;

(D) to the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to the collateral; and

(E) to the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects in, or damage to the collateral.

(69) Except as used in "for record," "of record," "record or legal title," and "record owner," "**record**" means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

(73) "**Security agreement**" means an agreement that creates or provides for a security interest.

(76) "**State**" means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(79) "**Termination statement**" means an amendment of a financing statement which:

(A) identifies, by its file number, the initial financing statement to which it relates; and

(B) indicates either that it is a termination statement or that the identified financing statement is no longer effective.

2. Filing Office Operation

(18) "**Communicate**" means:

(A) to send a written or other tangible record;

(B) to transmit a record by any means agreed upon by the persons sending and receiving the record; or
(C) in the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.

Comment—There is no concept of “certification” in Article 9.

(36) "**File number**" means the number assigned to an initial financing statement pursuant to Section 519(a).

(37) "**Filing office**" means an office designated in Section 9-501 as the place to file a financing statement.

(38) "**Filing-office rule**" means a rule adopted pursuant to Section 9-526.

(74) "**Send**," in connection with a record or notification, means to:

(A) deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or
(B) cause the record or notification to be received within the time that it would have been received if properly sent under subparagraph (A).

3. Parties to a Secured Transaction

(19) "**Consignee**" means a merchant to which goods are delivered in a consignment.

(21) "**Consignor**" means a person that delivers goods to a consignee in a consignment.

(22) "**Consumer debtor**" means a debtor in a consumer transaction.

(25) "**Consumer obligor**" means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family, or household purposes.

(28) "**Debtor**" means:

(A) a person having a property interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;

(B) a seller of accounts, chattel paper, payment intangibles, or promissory notes; or

(C) a consignee.

(59) "**Obligor**" means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral, (i) owes payment or other performance of the obligation, (ii) has provided property other than the collateral to secure payment or other performance of the obligation, or (iii) is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include an issuer or a nominated person under a letter of credit.

(60) "**Original debtor**" means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under Section 9-203(c) 203(d).

(70) "**Registered organization**" means an organization organized solely under the law of one State or the United States and as to which the State or the United States must maintain a public record showing the organization to have been organized.

(71) "**Secondary obligor**" means an obligor to the extent that:

(A) the obligor's obligation is secondary; or

(B) the obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

(72) "**Secured party**" means:

(A) a person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;

(B) a person that holds an agricultural lien;

(C) a consignor;

(D) a person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;

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(E) a trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for; or

(F) a person that holds a security interest arising under Section 2-401, 2-505, 2-711(3), 2A-508(5), 4-210, or 5-118.

4. Types of Collateral

(6) "**As-extracted collateral**" means:

(A) oil, gas, or other minerals that are subject to a security interest that:

(i) is created by a debtor having an interest in the minerals before extraction; and

(ii) attaches to the minerals as extracted; or

(B) accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.

(12) "**Collateral**" means the property subject to a security interest or agricultural lien. The term includes:

(A) proceeds to which a security interest attaches under Section 9-315;

(B) accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and

(C) goods that are the subject of a consignment.

(23) "**Consumer goods**" means goods that are used or bought for use primarily for personal, family, or household purposes.

(33) "**Equipment**" means goods other than inventory, farm products, or consumer goods.

(34) "**Farm products**" means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are:

(A) crops grown, growing, or to be grown, including:

(i) crops produced on trees, vines, and bushes; and

(ii) aquatic goods produced in aquacultural operations;

(B) livestock, born or unborn, including aquatic goods produced in aquacultural operations;

(C) supplies used or produced in a farming operation; or

(D) products of crops or livestock in their unmanufactured states.

(35) "**Farming operation**" means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.

(41) "**Fixtures**" means goods that have become so related to particular real property that an interest in them arises under real property law.

(44) "**Goods**" means all things that are movable when a security interest attaches. The term includes (i) fixtures, (ii) standing timber that is to be cut and removed under a conveyance or contract for sale, (iii) the unborn young of animals, (iv) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes, and (v) manufactured homes. A computer program that is contained in goods other than a computer or computer peripheral is part of the term also includes a computer program structurally integrated with goods, any informational content included in the program, and any supporting information provided in connection with a transaction relating to the program or informational content if (i) the program is associated with the goods in such a manner that it customarily is considered part of the goods, or (ii) by becoming the owner of the goods, a person would acquire a right to use the program in connection with the goods. The term does not include a program integrated with goods that consist solely of the medium with which the program is integrated. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.

(48) "**Inventory**" means goods, other than farm products, which:

(A) are leased by a person as lessor;

(B) are held by a person for sale or lease or to be furnished under contracts of service;

- (C) are furnished by a person under a contract of service; or
- (D) consist of raw materials, work in process, or materials used or consumed in a business.

(53) "**Manufactured home**" means a structure, transportable in one or more sections, which in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. The term includes any structure that meets all of the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States Secretary of Housing and Urban Development and complies with the standards established under Title 42 of the United States Code.

Comment—Manufactured home have special treatment under Article 9.

5. Collateral Description

This section stipulates what is necessary in a collateral description to be sufficient to put a searcher on notice as to what are the types of collateral covered by a loan.

SECTION 9-108. SUFFICIENCY OF DESCRIPTION.

- (a) Except as otherwise provided in subsections (c), (d), and (e), a description of personal or real property is sufficient, whether or not it is specific, if it reasonably identifies what is described.
- (b) Except as otherwise provided in subsection (d), a description of collateral reasonably identifies the collateral if it identifies the collateral by:
 - (1) specific listing;
 - (2) category;
 - (3) except as otherwise provided in subsection (e), a type of collateral defined in [the Uniform Commercial Code];
 - (4) quantity;
 - (5) computational or allocational formula or procedure; or
 - (6) except as otherwise provided in subsection (c), any other method, if the identity of the collateral is objectively determinable.
- (c) A description of collateral as "all the debtor's assets" or "all the debtor's personal property" or using words of similar import does not reasonably identify the collateral.
- (d) Except as otherwise provided in subsection (e), a description of a security entitlement, securities account, or commodity account is sufficient if it describes:
 - (1) the collateral by those terms or as investment property; or
 - (2) the underlying financial asset or commodity contract.
- (e) A description only by type of collateral defined in the [Uniform Commercial Code] is an insufficient description of:
 - (1) a commercial tort claim; or
 - (2) in a consumer transaction, consumer goods, a security entitlement, a securities account, or a commodity account.

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Appendix II—Article 9 Part 3—Perfection and Priority

Where to File

Sections 9-301 and 302 indicate where to file when filing is required. The general rule, stated in 9-301(1), is to file “where the debtor is located.” See 9-307 below for the definition of the location of debtor. Subsections (2)-(4) deal with special rules of no interest of recorders. Subsections (5) and (6) state where to file, which is with the recorder where the collateral is fixtures (4), timber to be cut (5) or as-extracted collateral (6).

SECTION 9-301. LAW GOVERNING PERFECTION AND PRIORITY OF SECURITY INTERESTS. *Except as otherwise provided in Sections 9-303 through 9-306, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:*

(1) *Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral.*

(2) *While collateral is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a possessory security interest in that collateral.*

(3) *Except as otherwise provided in paragraphs (4), (5), and (6), while negotiable documents, goods, instruments, money, or tangible chattel paper is located in a jurisdiction, the local law of that jurisdiction governs the effect of perfection or nonperfection and the priority of a nonpossessory security interest.*

(4) *While goods are located in a jurisdiction, the local law of that jurisdiction governs perfection of a security interest in the goods by filing a fixture filing.*

(5) *The local law of the jurisdiction in which timber to be cut is located governs perfection of a security interest in the timber.*

(6) *The local law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-extracted collateral.*

Whereas the old Article 9 only deals with “security interests,” the new Code also bring something called “agricultural liens” within the reach of Article 9. See Appendix I for a definition of this term. These liens have nothing to do with what recorders in some states think of as local crop filings or Food Security Act filings. The where to file rule stated below is different from the rule for security interests in that the place of filing is the state where the collateral is located, not where the debtor is located..

SECTION 9-302. LAW GOVERNING PERFECTION AND PRIORITY OF AGRICULTURAL LIENS. *While farm products are located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of an agricultural lien on the farm products.*

Location of Debtor

Under new Article 9, Section 9-301 the general rule of where to file is location of debtor. Section 9-307 defines the term, “location of debtor.”

SECTION 9-307. LOCATION OF DEBTOR.

(a) *In this section, “place of business” means a place where a debtor conducts its affairs.*

(b) *Except as otherwise provided in this section, the following rules determine a debtor's location:*

(1) *An individual debtor is located at the individual's residence.*

(2) *Any other debtor having only one place of business is located at its place of business.*

(3) *Any other debtor having more than one place of business is located at its chief executive office.*

(c) *Subsection (b) applies only if a debtor's residence, place of business, or chief executive office, as applicable, is located either in (i) a State or in(ii) a jurisdiction, other than a State, whose law requires information concerning the existence of a nonpossessory security interest to be made generally available in a filing, recording, or registration system as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. If subsection (b) does not apply, the debtor is located in the District of Columbia.*

(d) A person that ceases to exist, have a residence, or have a place of business continues to be located in the jurisdiction specified by subsections (b) and (c).

(e) A registered organization that is organized under the law of a State is located in that State.

(f) Except as otherwise provided in subsection (i), a registered organization that is organized under the law of the United States and a branch or agency of a bank that is a registered organization and is not organized under the law of the United States or a State are located:

(1) in the State that the law of the United States designates, if the law designates a State of location;

(2) in the State that the registered organization designates, if the law of the United States authorizes the registered organization to designate its State of location; or

(3) in the District of Columbia, if neither paragraph (1) nor paragraph (2) applies.

(g) A registered organization continues to be located in the jurisdiction specified by subsection (e) or (f) notwithstanding:

(1) the suspension, revocation, forfeiture, or lapse of the registered organization's status as such in its jurisdiction of organization; or

(2) the dissolution, winding up, or cancellation of the existence of the registered organization.

(h) The United States is located in the District of Columbia.

(i) A branch or agency of a bank that is not organized under the law of the United States or a State is located in the State in which the branch or agency is licensed, if all branches and agencies of the bank are licensed in only one State.

(j) A foreign air carrier under the Federal Aviation Act of 1958, as amended, is located at the designated office of the agent upon which service of process may be made on behalf of the carrier.

(k) This section applies only for purposes of this part.

Priority

Priority of filings is defined as the relative rights of secured parties in a particular property or class of property. Section 9-322 states the general rule for determining the priority of filings, by different secured parties, which list the same collateral.

SECTION 9-322. PRIORITIES AMONG CONFLICTING SECURITY INTERESTS AND AGRICULTURAL LIENS IN SAME COLLATERAL.

(a) Except as otherwise provided in this section, priority among conflicting security interests and agricultural liens in the same collateral is determined according to the following rules:

(1) Conflicting perfected security interests and agricultural liens rank according to priority in time of filing or perfection. Priority dates from the earlier of the time a filing covering the collateral is first made or the security interest or agricultural lien is first perfected, if there is no period thereafter when there is neither filing nor perfection.

(2) A perfected security interest or agricultural lien has priority over a conflicting unperfected security interest or agricultural lien.

(3) The first security interest or agricultural lien to attach or become effective has priority if conflicting security interests and agricultural liens are unperfected.

(b) For the purposes subsection (a)(1):

(1) the time of filing or perfection as to a security interest in collateral is also the time of filing or perfection as to a security interest in proceeds; and

(2) the time of filing or perfection as to a security interest in collateral supported by a supporting obligation is also the time of filing or perfection as to a security interest in the supporting obligation.

(c) Except as otherwise provided in subsection (f), a security interest in collateral which qualifies for priority over a conflicting security interest under Section 9-327, 9-328, 9-329, 9-330, or 9-331 also has priority over a conflicting security interest in:

(1) any supporting obligation for the collateral; and

(2) proceeds of the collateral if:

(A) the security interest in proceeds is perfected;

(B) the proceeds are:

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(i) cash proceeds; or

(ii) of the same type as the collateral; and

(C) in the case of proceeds that are proceeds of proceeds, all intervening proceeds are cash proceeds, proceeds of the same type as the collateral, or, if the collateral has been or is to be sold or otherwise disposed of, an account relating to the collateral.

(d) Subject to subsection (e) and except as otherwise provided in subsection (f), if a security interest in chattel paper, deposit accounts, negotiable documents, instruments, investment property, or letter-of-credit rights is perfected by a method other than filing, conflicting perfected security interests in proceeds of the collateral rank according to priority in time of filing.

(e) Subsection (d) applies only if the proceeds of the collateral are not cash proceeds, chattel paper, negotiable documents, instruments, investment property, or letter-of-credit rights.

(f) Subsections (a) through (e) are subject to:

(1) subsection (g) and the other provisions of this part;

(2) Section 4-210 with respect to a security interest of a collecting bank; (3) Section 5-118 with respect to a security interest of an issuer or nominated person; and

(4) Section 9-110 with respect to a security interest arising under Article 2 or 2A.

(g) If a statute under which an agricultural lien in collateral is created provides that the agricultural lien has priority over a conflicting security interest or agricultural lien in the same collateral, the statute governs priority if the agricultural lien is perfected.

Priority—Purchase Money Security Interests

Purchase money security interests arise from lending or leasing on newly acquired equipment or inventory. In the case of equipment that could also be construed as a fixture, a filing is required within 20 days of delivery of the collateral to the debtor. This is one reason that a recorder must stamp filings with the date received and not hold them for later stamping.

SECTION 9-324. PRIORITY OF PURCHASE-MONEY SECURITY INTERESTS.

(a) Subject to subsection (b) and except as otherwise provided in subsection (g), a perfected purchase-money security interest in **inventory** has priority over a conflicting security interest in the same inventory, has priority over a conflicting security interest in chattel paper or an instrument constituting proceeds of the inventory and in proceeds of the chattel paper, if so provided in Section 9-330, and, except as otherwise provided in Section 9-327, also has priority in identifiable cash proceeds of the inventory to the extent the identifiable cash proceeds are received on or before the delivery of the inventory to a buyer, if:

(1) the purchase-money security interest is perfected when the debtor receives possession of the inventory;

(2) the purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;

(3) the holder of the conflicting security interest receives the notification within five years before the debtor receives possession of the inventory; and

(4) the notification states that the person sending the notification has or expects to acquire a purchase-money security interest in inventory of the debtor and describes the inventory.

(b) Subsections (a)(2) through (4) apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of inventory:

(1) if the purchase-money security interest is perfected by filing, before the date of the filing; or

(2) if the purchase-money security interest is temporarily perfected without filing or possession under Section 9-312(f), before the beginning of the 20-day period thereunder.

(c) Subject to subsection (e) and except as otherwise provided in subsection (g), a perfected purchase-money security interest in **livestock** that are farm products has priority over a conflicting security interest in the same livestock, and, except as otherwise provided in Section 9-327, a perfected security interest in their identifiable proceeds and identifiable products in their unmanufactured states also has priority, if:

(1) the purchase-money security interest is perfected when the debtor receives possession of the livestock;

(2) the purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;

(3) the holder of the conflicting security interest receives the notification within six months before the debtor receives possession of the livestock; and

(4) the notification states that the person sending the notification has or expects to acquire a purchase-money security interest in livestock of the debtor and describes the livestock.

(d) Subsections (c)(2) through (4) apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of livestock:

(1) if the purchase-money security interest is perfected by filing, before the date of the filing; or

(2) if the purchase-money security interest is temporarily perfected without filing or possession under Section 9-312(f), before the beginning of the 20-day period thereunder.

(e) Except as otherwise provided in subsection (g), a perfected purchase-money security interest in **goods other than inventory or livestock** has priority over a conflicting security interest in the same goods, and, except as otherwise provided in Section 9-327, a perfected security interest in its identifiable proceeds also has priority, **if the purchase-money security interest is perfected when the debtor receives possession of the collateral or within 20 days thereafter.**

(f) Except as otherwise provided in subsection (g), a perfected purchase-money security interest in software has priority over a conflicting security interest in the same collateral, and, except as otherwise provided in Section 9-327, a perfected security interest in its identifiable proceeds also has priority, to the extent that the purchase-money security interest in the goods in which the software was acquired for use has priority in the goods and proceeds of the goods under this section.

(g) If more than one security interest qualifies for priority in the same collateral under subsection (a), (c), (e), or (f):

(1) a security interest securing an obligation incurred as all or part of the price of the collateral has priority over a security interest securing an obligation incurred for value given to enable the debtor to acquire rights in or the use of collateral; and

in all other cases, Section 9-322(a) applies to the qualifying security interests.

Priority—Financing Statement With Incorrect Information

SECTION 9-338. PRIORITY OF SECURITY INTEREST OR AGRICULTURAL LIEN PERFECTED BY FILED FINANCING STATEMENT PROVIDING CERTAIN INCORRECT INFORMATION. If a security interest or agricultural lien is perfected by a filed financing statement providing information described in Section 9-516(b)(5) which is incorrect at the time the financing statement is filed:

(1) the security interest or agricultural lien is subordinate to a conflicting perfected security interest in the collateral to the extent that the holder of the conflicting security interest **gives value in reasonable reliance upon the incorrect information;** and

(2) a purchaser, other than a secured party, of the collateral takes free of the security interest or agricultural lien to the extent that, in reasonable reliance upon the incorrect information, the purchaser gives value and, in the case of chattel paper, documents, goods, instruments, or a security certificate, receives delivery of the collateral.

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Appendix III—Article 9 Part 5—Filing

Following is a full copy of the July 30, 1998 final, approved Part 5 of Article 9. Items of interest to recorders are either highlighted or commented on.

[SUBPART 1. FILING OFFICE; CONTENTS AND EFFECTIVENESS OF FINANCING STATEMENT]

SECTION 9-501. FILING OFFICE.

(a) Except as otherwise provided in subsection (b), if the local law of this State governs perfection of a security interest or agricultural lien, the office in which to file a financing statement to perfect the security interest or agricultural lien is:

- (1) the office designated for the filing or recording of a mortgage on the real property, if:
(A) the collateral is as-extracted collateral or timber to be cut; or
(B) the financing statement is filed as a fixture filing and the collateral is goods that are or are to become fixtures; or*

(2) the office of [] [or any office duly authorized by []], in all other cases, including if the collateral is goods that are or are to become fixtures and the financing statement is not filed as a fixture filing.

(b) The office in which to file a financing statement to perfect a security interest in collateral, including fixtures, of a transmitting utility is the office of []. The financing statement also constitutes a fixture filing as to the collateral indicated in the financing statement which is or is to become fixtures.

Legislative Note: The State should designate the filing office where the brackets appear. The filing office may be that of a governmental official (e.g., the Secretary of State) or a private party that maintains the State's filing system.

Comments—Only realty-related filings are submitted to recording offices under 9-501(a)(2). The reference to “private party” in the legislative note alludes only to central filing offices. There is no intention on the part of the drafting committee to suggest privatization of any local government agency.

SECTION 9-502. CONTENTS OF FINANCING STATEMENT; MORTGAGE AS FINANCING STATEMENT; TIME OF FILING FINANCING STATEMENT.

(a) Subject to subsection (b), a financing statement is sufficient only if it:

- (1) provides the name of the debtor;*
- (2) provides the name of the secured party or a representative of the secured party; and*
- (3) indicates the collateral covered by the financing statement.*

(b) Except as otherwise provided in Section 9-501(b), to be sufficient, a financing statement that covers as-extracted collateral or timber to be cut, or which is filed as a fixture filing and covers goods that are or are to become fixtures, must comply with the requirements of subsection (a) and also:

- (1) indicate that it covers this type of collateral;*
- (2) indicate that it is to be filed [for record] in the real property records;*
- (3) provide a description of the real property to which the collateral is related [sufficient to give constructive notice of the mortgage under the law of this State if the description were contained in a mortgage of the real property]; and*
- (4) if the debtor does not have an interest of record in the real property, provide the name of a record owner.*

(c) A real property mortgage is effective from the date of recording as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut only if:

- (1) the mortgage indicates the goods or accounts that it covers;*
- (2) the goods are or are to become fixtures related to the real property described in the mortgage or the collateral is related to the real property described in the mortgage and is as-extracted collateral or timber to be cut;*
- (3) the mortgage complies with the requirements for a financing statement in this section other than an indication that it is to be filed in the real property records; and*

(4) the mortgage is [duly] recorded.

(d) A financing statement may be filed before a security agreement is made or a security interest otherwise attaches.

Legislative Note: Language in brackets is optional. Where the State has any special recording system for real property other than the usual grantor-grantee index (as, for instance, a tract system or a title registration or Torrens system) local adaptations of subsection (b) and Section 9-519(d) and (e) may be necessary. See, e.g., Mass. Gen. Laws Chapter 106, Section 9-410.

Comment—This section lists the items that are required to be included a UCC form so that the filing perfects the interest of the secured party, which remain the same as under prior law.

SECTION 9-503. NAME OF DEBTOR AND SECURED PARTY.

(a) A financing statement sufficiently provides the name of the debtor:

(1) if the debtor is a registered organization, only if the financing statement provides the name of the debtor indicated on the public record of the debtor's jurisdiction of organization which shows the debtor to have been organized;

(2) if the debtor is a decedent's estate, only if the financing statement provides the name of the decedent and indicates that the debtor is an estate;

(3) if the debtor is a trust or a trustee acting with respect to property held in trust, only if the financing statement: (A) provides the name, if any, specified for the trust in its organic documents or, if no name is specified, provides the name of the settlor and additional information sufficient to distinguish the debtor from other trusts having one or more of the same settlors; and

(B) indicates, in the debtor's name or otherwise, that the debtor is a trust or is a trustee acting with respect to property held in trust; and

(4) in other cases:

(A) if the debtor has a name, only if it provides the individual or organizational name of the debtor; and

(B) if the debtor does not have a name, only if it provides the names of the partners, members, associates, or other persons comprising the debtor.

(b) A financing statement that provides the name of the debtor in accordance with subsection (a) is not rendered ineffective by the absence of:

(1) a trade name or other name of the debtor; or

(2) unless required under subsection (a)(4)(B), names of partners, members, associates, or other persons comprising the debtor.

(c) A financing statement that provides only the debtor's trade name does not sufficiently provide the name of the debtor.

(d) Failure to indicate the representative capacity of a secured party or representative of a secured party does not affect the sufficiency of a financing statement.

(e) A financing statement may provide the name of more than one debtor and the name of more than one secured party.

SECTION 9-504. INDICATION OF COLLATERAL.

A financing statement sufficiently indicates the collateral that it covers if the financing statement provides:

(1) a description of the collateral pursuant to Section 9-108; or

(2) an indication that the financing statement covers all assets or all personal property.

SECTION 9-505. FILING AND COMPLIANCE WITH OTHER STATUTES AND TREATIES FOR CONSIGNMENTS, LEASES, BAILMENTS, AND OTHER TRANSACTIONS.

(a) A consignor, lessor, or bailor of goods or a buyer of a payment intangible or promissory note may file a financing statement, or may comply with a statute or treaty described in Section 9-311(a), using the terms "consignor," "consignee," "lessor," "lessee," "bailor," "bailee," "owner," "registered owner," "buyer," "seller," or words of similar import, instead of the terms "secured party" and "debtor."

(b) This part applies to the filing of a financing statement under subsection (a) and, as appropriate, to compliance that is equivalent to filing a financing statement under Section 9-311(c), but the filing or compliance is not of

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itself a factor in determining whether the collateral secures an obligation. If it is determined for another reason that the collateral secures an obligation, a security interest held by the consignor, lessor, bailor, owner, or buyer which attaches to the collateral is perfected by the filing or compliance.

SECTION 9-506. EFFECT OF ERRORS OR OMISSIONS.

(a) A financing statement substantially complying with the requirements of this part is effective, even if it includes minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading.

(b) Except as otherwise provided in subsection (c), a financing statement that fails sufficiently to provide the name of the debtor in accordance with Section 9-503(a) is seriously misleading.

(c) If a search of the records of the filing office under the debtor's correct name, using the filing office's standard search logic, if any, would disclose a financing statement that fails sufficiently to provide the name of the debtor in accordance with Section 9-503(a), the name provided does not make the financing statement seriously misleading.

(d) For purposes of Section 9-508(b), the "debtor's correct name" in subsection (c) means the correct name of the new debtor.

Comment—The addition of subsections (b) and (c) represent new protections to secured parties.

SECTION 9-507. EFFECT OF CERTAIN EVENTS ON EFFECTIVENESS OF FINANCING STATEMENT.

(a) A filed financing statement remains effective with respect to collateral that is sold, exchanged, leased, licensed, or otherwise disposed of and in which a security interest or agricultural lien continues, even if the secured party knows of or consents to the disposition.

(b) Except as otherwise provided in subsection (c) and Section 9-508, a financing statement is not rendered ineffective if, after the financing statement is filed, the information provided in the financing statement becomes seriously misleading under the standard set forth in Section 9-506.

(c) If a debtor so changes its name that a filed financing statement becomes seriously misleading under the standard set forth in Section 9-506:

(1) the financing statement is effective to perfect a security interest in collateral acquired by the debtor before, or within four months after, the change; and

(2) the financing statement is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the change, unless an amendment to the financing statement which renders the financing statement not seriously misleading is filed within four months after the change.

SECTION 9-508. EFFECTIVENESS OF FINANCING STATEMENT IF NEW DEBTOR BECOMES BOUND BY SECURITY AGREEMENT.

(a) Except as otherwise provided in this section, a filed financing statement naming an original debtor is effective to perfect a security interest in collateral in which a new debtor has or acquires rights to the extent that the financing statement would have been effective had the original debtor acquired rights in the collateral.

(b) If the difference between the name of the original debtor and that of the new debtor causes a filed financing statement that is effective under subsection (a) to be seriously misleading under the standard set forth in Section 9-506:

(1) the financing statement is effective to perfect a security interest in collateral acquired by the new debtor before, and within four months after, the new debtor becomes bound under Section 9-203(c); and

(2) the financing statement is not effective to perfect a security interest in collateral acquired by the new debtor more than four months after the new debtor becomes bound under Section 9-203(c) unless an initial financing statement providing the name of the new debtor is filed before the expiration of that time.

(c) This section does not apply to collateral as to which a filed financing statement remains effective against the new debtor under Section 9-507(a).

SECTION 9-509. PERSONS ENTITLED TO FILE A RECORD.

(a) A person may file an initial financing statement, amendment that adds collateral covered by a financing statement, or amendment that adds a debtor to a financing statement **only if**:

- (1) *the debtor authorizes the filing in an authenticated record; or*
- (2) *the person holds an agricultural lien that has become effective at the time of filing and the financing statement covers only collateral in which the person holds an agricultural lien.*
- (b) *By authenticating a security agreement, a debtor authorizes the filing of an initial financing statement, and an amendment, covering:*
 - (1) *the collateral described in the security agreement; and*
 - (2) *property that becomes collateral under Section 9-315(a)(2), whether or not the security agreement expressly covers proceeds.*
- (c) *A person may file an amendment other than an amendment that adds collateral covered by a financing statement or an amendment that adds a debtor to a financing statement only if:*
 - (1) *the secured party of record authorizes the filing; or*
 - (2) *the amendment is a termination statement for a financing statement as to which the secured party of record has failed to file or send a termination statement as required by Section 9-513(a) or (c).*
- (d) *If there is more than one secured party of record for a financing statement, each secured party of record may authorize the filing of an amendment under subsection (c).*

Comment—This section deals with the new concepts of authentication and authorization which replace signature requirements.

SECTION 9-510. EFFECTIVENESS OF FILED RECORD.

- (a) *Subject to subsection (c), a filed record is effective only to the extent that it was filed by a person that may file it under Section 9-509.*
- (b) *A record authorized by one secured party of record does not affect the financing statement with respect to another secured party of record.*
- (c) *If a person may file a termination statement only under Section 9-509(c)(2), the filed termination statement is effective only if the debtor authorizes the filing and the termination statement indicates that the debtor authorized it to be filed.*
- (d) *A continuation statement that is not filed within the six-month period prescribed by Section 9-515(d) is ineffective.*

SECTION 9-511. SECURED PARTY OF RECORD.

- (a) *A secured party of record with respect to a financing statement is a person whose name is provided as the name of the secured party or a representative of the secured party in an initial financing statement that has been filed. If an initial financing statement is filed under Section 9-514(a), the assignee named in the initial financing statement is the secured party of record with respect to the financing statement.*
- (b) *If an amendment of a financing statement which provides the name of a person as a secured party or a representative of a secured party is filed, the person named in the amendment is a secured party of record. If an amendment is filed under Section 9-514(b), the assignee named in the amendment is a secured party of record.*
- (c) *A person remains a secured party of record until the filing of an amendment of the financing statement which deletes the person.*

SECTION 9-512. AMENDMENT OF FINANCING STATEMENT.

Subsection (a) - Alternative A

- (a) *Subject to Section 9-509, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or, subject to subsection (e), otherwise amend the information provided in, a financing statement by filing an amendment that:*
 - (1) *identifies, by its file number, the initial financing statement to which the amendment relates; and*
 - (2) *if the amendment relates to an initial financing statement filed [or recorded] in a filing office described in Section 9-501(a)(2), provides the information specified in Section 9-502(b).*

Subsection (a) - Alternative B

- (a) *Subject to Section 9-509, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or, subject to subsection (e), otherwise amend the information provided in, a financing statement by filing an amendment that:*

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(1) identifies, by its file number, the initial financing statement to which the amendment relates; and
(2) if the amendment relates to an initial financing statement filed [or recorded] in a filing office described in Section 9-501(a)(2), provides the date [and time] that the initial financing statement was filed [or recorded] and the information specified in Section 9-502(b).

[End of Alternatives]

(b) Except as otherwise provided in Section 9-515, the filing of an amendment does not extend the period of effectiveness of the financing statement.

(c) A financing statement that is amended by an amendment that adds collateral is effective as to the added collateral only from the date of the filing of the amendment.

(d) A financing statement that is amended by an amendment that adds a debtor is effective as to the added debtor only from the date of the filing of the amendment.

(e) An amendment is ineffective to the extent it:

(1) purports to delete all debtors and fails to provide the name of a debtor to be covered by the financing statement; or

(2) purports to delete all secured parties of record and fails to provide the name of a new secured party of record.

Legislative Note: States whose real-estate filing offices require additional information in amendments and cannot search their records by both the name of the debtor and the file number should enact Alternative B to Sections 9-512(a), 9-518(b), 9-519(f) and 9-522(a).

Comment—Alternative B should apply to recording offices in most states.

SECTION 9-513. TERMINATION STATEMENT.

(a) A secured party shall cause the secured party of record for a financing statement to file a termination statement for the financing statement if the financing statement covers consumer goods and:

(1) there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value; or

(2) the debtor did not authorize the filing of the initial financing statement.

(b) To comply with subsection (a), a secured party shall cause the secured party of record to file the termination statement:

(1) within one month after there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value; or

(2) if earlier, within 20 days after the secured party receives an authenticated demand from a debtor.

(c) In cases not governed by subsection (a), within 20 days after a secured party receives an authenticated demand from a debtor, the secured party shall cause the secured party of record for a financing statement to send to the debtor a termination statement for the financing statement or file the termination statement in the filing office if:

(1) except in the case of a financing statement covering accounts or chattel paper that has been sold or goods that are the subject of a consignment, there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value;

(2) the financing statement covers accounts or chattel paper that has been sold but as to which the account debtor or other person obligated has discharged its obligation;

(3) the financing statement covers goods that were the subject of a consignment to the debtor but are not in the debtor's possession; or

(4) the debtor did not authorize the filing of the initial financing statement.

(d) Except as otherwise provided in Section 9-510, upon the filing of a termination statement with the filing office, the financing statement to which the termination statement relates ceases to be effective.

SECTION 9-514. ASSIGNMENT OF POWERS OF SECURED PARTY OF RECORD.

(a) Except as otherwise provided in subsection (c), an initial financing statement may reflect an assignment of all of the secured party's power to authorize an amendment to the financing statement by providing the name and mailing address of the assignee as the name and address of the secured party.

(b) Except as otherwise provided in subsection (c), a secured party of record may assign of record all or part of its power to authorize an amendment to a financing statement by filing in the filing office an amendment of the financing statement which:

- (1) identifies, by its file number, the initial financing statement to which it relates;
- (2) provides the name of the assignor; and
- (3) provides the name and mailing address of the assignee.

(c) An assignment of record of a security interest in a fixture covered by a real property mortgage that is effective as a fixture filing under Section 9-502(d) may be made only by an assignment of record of the mortgage in the manner provided by law of this State other than the [Uniform Commercial Code].

SECTION 9-515. DURATION AND EFFECTIVENESS OF FINANCING STATEMENT; EFFECT OF LAPSED FINANCING STATEMENT.

(a) Except as otherwise provided in subsections (b), (e), (f), and (g), a filed financing statement is effective for a period of five years after the date of filing.

(b) Except as otherwise provided in subsections (e), (f), and (g), an initial financing statement filed in connection with a public-finance transaction or manufactured-home transaction is effective for a period of 30 years after the date of filing if it indicates that it is filed in connection with a public-finance transaction or manufactured-home transaction.

(c) The effectiveness of a filed financing statement lapses on the expiration of the period of its effectiveness unless before the lapse a continuation statement is filed pursuant to subsection (d). Upon lapse, a financing statement ceases to be effective and any security interest or agricultural lien that was perfected by the financing statement becomes unperfected, unless the security interest is perfected without filing. If the security interest or agricultural lien becomes unperfected upon lapse, it is deemed never to have been perfected as against a purchaser of the collateral for value.

(d) A continuation statement may be filed only within six months before the expiration of the five-year period specified in subsection (a) or the thirty-year period specified in subsection (b), whichever is applicable.

(e) Except as otherwise provided in Section 9-510, upon timely filing of a continuation statement, the effectiveness of the initial financing statement continues for a period of five years commencing on the day on which the financing statement would have become ineffective in the absence of the filing. Upon the expiration of the five-year period, the financing statement lapses in the same manner as provided in subsection (c), unless, before the lapse, another continuation statement is filed pursuant to subsection (d). Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the initial financing statement.

(f) If a debtor is a transmitting utility and a filed financing statement so indicates, the financing statement is effective until a termination statement is filed.

(g) A real property mortgage that is effective as a fixture filing under Section 9-502(d) remains effective as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real property.

[Errors pointed out by Bob Henderson]

SECTION 9-516. WHAT CONSTITUTES FILING; EFFECTIVENESS OF FILING.

(a) Except as otherwise provided in subsection (b), communication of a record to a filing office and tender of the filing fee or acceptance of the record by the filing office constitutes filing.

(b) Filing does not occur with respect to a record that a filing office refuses to accept because:

- (1) the record is not communicated by a method or medium of communication authorized by the filing 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:

(A) in the case of an initial financing statement, the record does not provide a name for the debtor;

(B) in the case of an amendment or correction statement, the record:

- (i) does not identify the initial financing statement as required by Section 9-512 or 9-518, as applicable; or
- (ii) identifies an initial financing statement whose effectiveness has lapsed under Section 9-515;

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- (C) in the case of an initial financing statement that provides the name of a debtor identified as an individual or an amendment that provides a name of a debtor identified as an individual which was not previously provided in the financing statement to which the record relates, the record does not identify the debtor's last name; or
- (D) in the case of a record filed [or recorded] in the filing office described in Section 9-501(a)(2), the record does not provide a sufficient description of the real property to which it relates;**
- (4) in the case of an initial financing statement or an amendment that adds a secured party of record, the record does not provide a name and mailing address for the secured party of record;
- (5) 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 an organization; or
- (C) if the financing statement indicates that the debtor is an organization, provide:
- (i) a type of organization for the debtor;
- (ii) a jurisdiction of organization for the debtor; or
- (iii) an organizational identification number for the debtor or indicate that the debtor has none;
- (6) in the case of an assignment reflected in an initial financing statement under Section 9-514(a) or an amendment filed under Section 9-514(b), the record does not provide a name and mailing address for the assignee; or
- (7) in the case of a continuation statement, the record is not filed within the six-month period prescribed by Section 9-515(d).
- (c) For purposes of subsection (b):
- (1) a record does not provide information if the filing office is unable to read or decipher the information; and
- (2) a record that does not indicate that it is an amendment or identify an initial financing statement to which it relates, as required by Section 9-512, 9-514, or 9-518, is an initial financing statement.
- (d) A record that is communicated to the filing office with tender of the filing fee, but which the filing office refuses to accept for a reason other than one set forth in subsection (b), 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.

Comment—This section, taken together with section 9-520, specifies what kinds of filings a recorder is allowed to reject. There are no other acceptable reasons to reject a UCC filing than those enumerated here.

SECTION 9-517. EFFECT OF INDEXING ERRORS.

The failure of the filing office to index a record correctly does not affect the effectiveness of the filed record.

SECTION 9-518. CLAIM CONCERNING INACCURATE OR WRONGFULLY FILED RECORD.

(a) A person may file in the filing office a correction statement with respect to a record indexed there under the person's name if the person believes that the record is inaccurate or was wrongfully filed.

Subsection (b) - Alternative A

(b) A correction statement must:

- (1) identify the record to which it relates by 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 person's belief that the record was wrongfully filed.

Subsection (b) - Alternative B

(b) A correction statement must:

(1) identify the record to which it relates by:

- (A) the file number assigned to the initial financing statement to which the record relates; and

(B) if the correction statement relates to a record filed [or recorded] in a filing office described in Section 9-501(a)(2), the date [and time] that the initial financing statement was filed [or recorded] and the information specified in Section 9-502(b);

(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 person's belief that the record was wrongfully filed.

[End of Alternatives]

(c) The filing of a correction statement does not affect the effectiveness of an initial financing statement or other filed record.

Legislative Note: *States whose real-estate filing offices require additional information in amendments and cannot search their records by both the name of the debtor and the file number should enact Alternative B to Sections 9-512(a), 9-518(b), 9-519(f) and 9-522(a).*

Comment—Most states should choose alternative A for their recording offices.

[SUBPART 2. DUTIES AND OPERATION OF FILING OFFICE]

SECTION 9-519. NUMBERING, MAINTAINING, AND INDEXING RECORDS; COMMUNICATING INFORMATION PROVIDED IN RECORDS.

(a) For each record filed in a filing office, the filing office shall:

(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 filed record in accordance with subsections (c), (d), and (e).

(b) A file number [assigned after January 1, 2002,] must include a digit that:

(1) is mathematically derived from or related to the other digits of the file number; and

(2) enables the filing office to detect whether a number communicated as the file number includes a single-digit or transpositional error.

(c) Except as otherwise provided in subsections (d) and (e), the filing office shall:

(1) index an initial financing statement according to the name of the debtor and shall index all filed records relating to the initial financing statement in a manner that associates with one another an initial financing statement and all filed records relating to the initial financing statement; and

(2) index a record that provides a name of a debtor which was not previously provided in the financing statement to which the record relates also according to the name that was not previously provided.

(d) If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, [it must be filed for record and] the filing office shall index it:

(1) under the names of the debtor and of each owner of record shown on the financing statement as if they were the mortgagors under a mortgage of the real property described; and

(2) to the extent that the law of this State provides for indexing of mortgages under the name of the mortgagee, under the name of the secured party as if the secured party were the mortgagee thereunder, or, if indexing is by description, as if the financing statement were a mortgage of the real property described.

(e) If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, the filing office shall index an assignment filed under Section 9-514(a) or an amendment filed under Section 9-514(b):

(1) under the name of the assignor as grantor; and

(2) to the extent that the law of this State provides for indexing the assignment of a real property mortgage under the name of the assignee, under the name of the assignee.

Subsection (f) - Alternative A

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(f) The filing office shall maintain a capability that:

(1) retrieves a record by the name of the debtor and by the file number assigned to the initial financing statement to which the record relates; and

(2) associates and retrieves with one another an initial financing statement and each filed record relating to the initial financing statement.

Subsection (f) - Alternative B

(f) The filing office shall maintain a capability that:

(1) retrieves a record by the name of the debtor and:

(A) if the filing office is described in Section 9-501(a)(1), by the file number assigned to the initial financing statement to which the record relates; or

(B) if the filing office is described in Section 9-501(a)(2), by the file number assigned to the initial financing statement to which the record relates and the date [and time] that the record was filed [or recorded]; and

(2) associates and retrieves with one another an initial financing statement and each filed record relating to the initial financing statement.

[End of Alternatives]

(g) The filing office may not remove a debtor's name from the index until one year after the effectiveness of a financing statement naming the debtor lapses under Section 9-515 with respect to all secured parties of record.

(h) The filing office shall perform the acts required by subsections (a) through (e) at the time and in the manner prescribed by filing-office rule, but not later than two business days after the filing office receives the record in question.

[(i) [Subsection] [Subsections] [(b)] [and] [(h)] [does] [do] not apply to a filing office described in Section 9-501(a)(2).

Legislative Notes:

1. States whose filing offices currently assign file numbers that include a verification number, commonly known as a "check digit," or can implement this requirement before the effective date of this Article should omit the bracketed language in subsection (b).

2. In States in which writings will not appear in the real property records and indices unless actually recorded the bracketed language in subsection (d) should be used.

3. States whose real-estate filing offices require additional information in amendments and cannot search their records by both the name of the debtor and the file number should enact Alternative B to Sections 9-512(a), 9-518(b), 9-519(f) and 9-522(a).

4. A State that elects not to require real-estate filing offices to comply with either or both of subsections (b) and (h) may adopt an applicable variation of subsection (i) and add "Except as otherwise provided in subsection (i)," to the appropriate subsection or subsections.

Comment—Alternative B and subsection (i) should be enacted for recording offices in most states.

SECTION 9-520. ACCEPTANCE AND REFUSAL TO ACCEPT RECORD.

(a) A filing office shall refuse to accept a record for filing for a reason set forth in Section 9-516(b) and may refuse to accept a record for filing only for a reason set forth in Section 9-516(b).

(b) If a filing office refuses to accept a record for filing, it shall communicate to the person that presented the record the fact of and reason for the refusal **and the date and time the record would have been filed** had the filing office accepted it. The communication must be made at the time and in the manner prescribed by filing-office rule but **in no event more than two business days after the filing office receives the record.**

(c) A filed financing statement complying with Section 9-502(a) and (b) is effective, even if the filing office is required to refuse to accept it for filing under subsection (a). However, Section 9-338 applies to a filed financing statement providing information described in Section 9-516(b)(5) which is incorrect at the time the financing statement is filed.

(d) If a record communicated to a filing office provides information that relates to more than one debtor, this part applies as to each debtor separately.

Comment—Note the distinction in subsection (a) between “shall” and “may.”

SECTION 9-521. UNIFORM FORM OF WRITTEN FINANCING STATEMENT AND AMENDMENT.

(a) A filing office that accepts written records may not refuse to accept a written initial financing statement in the following form except for a reason set forth in Section 9-516(b):

[INSERT FINANCING STATEMENT FORM]

[INSERT ADDENDUM FORM]

(b) A filing office that accepts written records may not refuse to accept a written record in the following form except for a reason set forth in Section 9-516(b):

[INSERT AMENDMENT FORM]

[INSERT AMENDMENT ADDENDUM]

SECTION 9-522. MAINTENANCE AND DESTRUCTION OF RECORDS.

Subsection (a) - Alternative A

(a) Until at least one year after the effectiveness of a filed financing statement lapses under Section 9-515 with respect to all secured parties of record, the filing office shall maintain a record of the information provided in the financing statement. The record must be retrievable by using the name of the debtor and by using the file number assigned to the initial financing statement to which the record relates.

Subsection (a) - Alternative B

(a) Until at least one year after the effectiveness of a filed financing statement lapses under Section 9-515 with respect to all secured parties of record, the filing office shall maintain a record of the information provided in the financing statement. The record must be retrievable by using the name of the debtor and:

- (1) if the record was filed in the filing office described in Section 9-501(a)(1), by using the file number assigned to the initial financing statement to which the record relates; or
- (2) if the record was filed [or recorded] in the filing office described in Section 9-501(a)(2), by using the file number assigned to the initial financing statement to which the record relates and the date [and time] that the record was filed [or recorded].

[End of Alternatives]

(b) Except to the extent that a statute governing disposition of public records provides otherwise, the filing office immediately may destroy any written record evidencing a financing statement. However, if the filing office destroys a written record, it shall maintain another record of the financing statement which complies with subsection (a).

Note: States whose real-estate filing offices require additional information in amendments and cannot search their records by both the name of the debtor and the file number should enact Alternative B to Sections 9-512(a), 9-518(b), 9-519(f) and 9-522(a).

SECTION 9-523. INFORMATION FROM FILING OFFICE; SALE OR LICENSE OF RECORDS.

(a) If a person that files a written record requests an acknowledgment of the filing, the filing office shall send to the person an image of the record showing the number assigned to the record pursuant to Section 9-519(a)(1) and the date and time of the filing of the record. However, if the person furnishes a copy of the record to the filing office, the filing office may instead:

- (1) note upon the copy the number assigned to the record pursuant to Section 9-519(a)(1) and the date and time of the filing of the record; and

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(2) send the copy to the person.

(b) If a person files a record other than a written record, the filing office shall communicate to the person an acknowledgment that provides:

(1) the information in the record;

(2) the number assigned to the record pursuant to Section 9-519(a)(1); and

(3) the date and time of the filing of the record.

(c) The filing office shall communicate or otherwise make available in a record the following information to any person that requests it:

(1) whether there is on file on a date and time specified by the filing office, but not a date earlier than three business days before the filing office receives the request, any financing statement that:

(A) designates a particular debtor [or, if the request so states, designates a particular debtor at the address specified in the request];

(B) has not lapsed under Section 9-515 with respect to all secured parties of record; and

(C) if the request so states, has lapsed under Section 9-515 and a record of which is maintained by the filing office under Section 9-522(a);

(2) the date and time of filing of each financing statement; and

(3) the information provided in each financing statement.

(d) In complying with its duty under subsection (c), the filing office may communicate information in any medium. However, if requested, the filing office shall communicate information by issuing [its written certificate] [a record that can be admitted into evidence in the courts of this State without extrinsic evidence of its authenticity].

(e) The filing office shall perform the acts required by subsections (a) through (d) at the time and in the manner prescribed by filing-office rule, but not later than two business days after the filing office receives the request.

(f) At least weekly, the [insert appropriate official or governmental agency] [filing office] shall offer to sell or license to the public on a nonexclusive basis, in bulk, copies of all records filed in it under this part, in every medium from time to time available to the filing office.

Legislative Notes:

1. States whose filing office does not offer the additional service of responding to search requests limited to a particular address should omit the bracketed language in subsection (c)(1)(A).

2. A State that elects not to require real-estate filing offices to comply with subsection either or both of subsections (e) and (f) should specify in that subsection the appropriate subsection(s) only the filing office described in Section 9-501(a)(1).

SECTION 9-524. DELAY BY FILING OFFICE.

Delay by the filing office beyond a time limit prescribed in this part is excused if:

(1) the delay is caused by interruption of communication or computer facilities, war, emergency conditions, failure of equipment, or other circumstances beyond control of the filing office; and

(2) the filing office exercises reasonable diligence under the circumstances.

SECTION 9-525. FEES.

(a) Except as otherwise provided in subsection (e), the fee for filing and indexing a record under this part, other than an initial financing statement of the kind described in Section 9-502(c), is [the amount specified in subsection (c), if applicable, plus]:

(1) \$ ___[X]___ if the record is communicated in writing and consists of one or two pages;

(2) \$ ___[2X]___ if the record is communicated in writing and consists of more than two pages; and

(3) \$ ___[1/2X]___ if the record is communicated by another medium authorized by filing-office rule.

(b) Except as otherwise provided in subsection (e), the fee for filing and indexing an initial financing statement of the kind described in Section 9-502(c) is [the amount specified in subsection (c), if applicable, plus]:

(1) \$ ___ if the financing statement indicates that it is filed in connection with a public-finance transaction;

(2) \$ ___ if the financing statement indicates that it is filed in connection with a manufactured-home transaction.

Subsection (c)-Alternative A

(c) The number of names required to be indexed does not affect the amount of the fee in subsections (a) and (b).

Subsection (c)--Alternative B

(c) Except as otherwise provided in subsection (e), if a record is communicated in writing, the fee for each name more than two required to be indexed is \$ _____.

[End of Alternatives]

(d) The fee for responding to a request for information from the filing office, including for [issuing a certificate showing] [communicating] whether there is on file any financing statement naming a particular debtor, is:

(1) \$ _____ if the request is communicated in writing; and

(2) \$ _____ if the request is communicated by another medium authorized by filing-office rule.

(e) This section does not require a fee with respect to a mortgage that is effective as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut under Section 9-502(c). However, the recording and satisfaction fees that otherwise would be applicable to the mortgage apply.

Legislative Notes:

1. To preserve uniformity, a State that places the provisions of this section together with statutes setting fees for other services should do so without modification.

2. A State should enact subsection (c), Alternative A, and omit the bracketed language in subsections (a) and (b) unless its indexing system entails a substantial additional cost when indexing additional names.

SECTION 9-526. FILING-OFFICE RULES.

(a) The [insert appropriate governmental official or agency] shall adopt and publish rules to carry out the provisions of this article. The filing-office rules must be[:

(1)] consistent with this article[; and

(2) adopted and published in accordance with the [insert any applicable state administrative procedure act]].

(b) To keep the filing-office rules and practices of the filing office in harmony with the rules and practices of filing offices in other jurisdictions that enact substantially this part, and to keep the technology used by the filing office compatible with the technology used by filing offices in other jurisdictions that enact substantially this part, the [insert appropriate governmental official or agency], so far as is consistent with the purposes, policies, and provisions of this article, in adopting, amending, and repealing filing-office rules shall:

(1) consult with filing offices in other jurisdictions that enact substantially this part; and

(2) consult the most recent version of the Model Rules promulgated by the International Association of Corporate Administrators or any successor organization; and

(3) take into consideration the rules and practices of, and the technology used by, filing offices in other jurisdictions that enact substantially this part.

Comment—This section and others that deal with filing office operations need to be amended with the optional wording provided in the model act and in the chapter on “optional Wording” to apply to recording offices.

SECTION 9-527. DUTY TO REPORT.

The [insert appropriate governmental official or agency] shall report [annually on or before _____] to the [Governor and Legislature] on the operation of the filing office. The report must contain a statement of the extent to which:

(1) the filing office has complied with the time limits prescribed in this part and the reasons for any noncompliance;

(2) the filing-office rules are not in harmony with the rules of filing offices in other jurisdictions that enact substantially this part and the reasons for these variations; and

(3)(2) the filing-office rules are not in harmony with the most recent version of the Model Rules promulgated by the International Association of Corporate Administrators, or any successor organization, and the reasons for these variations.

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Appendix IV—Article 9 Part 7—Transition

The title of this section is as follows:

SECTION 9-701. EFFECTIVE DATE.

(a) *This [Act] takes effect on [January July 1, 2001].*

Comment—It is planned for the new Article 9 to become effective nationwide as of July 1, 2001.

SECTION 9-702. SAVINGS CLAUSE.

(a) *Except as otherwise provided in this part, this [Act] applies to a transaction or lien within its scope, even if the transaction or lien was entered into or created before this [Act] takes effect.*

(b) *Transactions Except as otherwise provided in subsection (c) and Sections 9-703 through 9-708:*

(1) *transactions and liens that were not governed by [former Article 9], were validly entered into or created before this [Act] takes effect, and would be subject to this [Act] if they had been entered into or created after this [Act] takes effect, and the rights, duties, and interests flowing from those transactions and liens remain valid after this [Act] takes effect. They; and*

(2) *the transactions and liens may be terminated, completed, consummated, or enforced as required or permitted by this [Act] or by the law that otherwise would apply if this [Act] did not take effect.*

(c) *This [Act] does not affect an action, case, or proceeding commenced before this [Act] takes effect.*

SECTION 9-703. SECURITY INTEREST PERFECTED BEFORE EFFECTIVE DATE.

(a) *If a security interest is enforceable and has priority over the rights of a lien creditor immediately before this [Act] takes effect and the applicable requirements for enforceability and perfection under this [Act] are satisfied without further action when this [Act] takes effect, the security interest is a perfected security interest under this [Act].*

(b) *Except as otherwise provided in Section 9-705, if a security interest is a perfected security interest under [former Article 9] immediately before this [Act] takes effect but the applicable requirements for enforceability or perfection under this [Act] are not satisfied when this [Act] takes effect, the security interest:*

(1) *is a perfected security interest for one year after this [Act] takes effect;*

(2) *remains enforceable thereafter only if the security interest becomes enforceable under Section 9-203 before the year expires; and*

(3) *remains perfected thereafter only if the applicable requirements for perfection under this [Act] are satisfied before the year expires.*

SECTION 9-704. SECURITY INTEREST UNPERFECTED BEFORE EFFECTIVE DATE. A security interest that is enforceable immediately before this [Act] takes effect but which is subordinate to the rights of a person that becomes a lien creditor at that time:

(1) *remains an enforceable security interest for one year after this [Act] takes effect;*

(2) *remains enforceable thereafter if the security interest becomes enforceable under Section 9-203 when this [Act] takes effect or within one year thereafter; and*

(3) *becomes perfected:*

(A) *without further action, when this [Act] takes effect if the applicable requirements for perfection under this [Act] are satisfied before or at that time; or*

(B) *when the applicable requirements for perfection are satisfied if the requirements are satisfied after that time.*

SECTION 9-705. EFFECTIVENESS OF ACTION TAKEN BEFORE EFFECTIVE DATE OF [ACT].

(a) *If action other than the filing of a financing statement, is taken before this [Act] takes effect and the action would have resulted in priority of a security interest over the rights of a lien creditor had the security interest become enforceable before this [Act] takes effect, the action is sufficient to perfect a security interest that attaches under this [Act] within one year after this [Act] takes effect. An attached security interest becomes unperfected one year after this [Act] takes effect unless the security interest becomes a perfected security interest under this [Act] before the expiration of that period.*

(b) The filing of a financing statement before this [Act] takes effect is sufficient to perfect a security interest that attaches after this [Act] takes effect to the extent the filing would satisfy the applicable requirements for perfection under this [Act].

(c) This [Act] does not render ineffective an effective financing statement that is filed before this [Act] takes effect in accordance with the law of the jurisdiction governing perfection as provided in [former Section 9-103]. However, except as otherwise provided in subsection (d):

(1) the financing statement ceases to be effective at the earlier of:

(A) the time the financing statement would have ceased to be effective under the law of the jurisdiction in which it is filed; or

(B) five years after this [Act] takes effect; and

(2) a continuation statement filed after this [Act] takes effect does not continue the effectiveness of the financing statement.

(d) A continuation statement filed after this [Act] takes effect and in accordance with the law of the jurisdiction governing perfection as provided in Part 3 is effective to continue the effectiveness of a financing statement filed in that jurisdiction before this [Act] takes effect.

(e) This [Act] does not render ineffective an effective financing statement that was filed before this [Act] takes effect and in the office specified in [former Section 9-401]. However, except as otherwise provided in subsection (f):

(1) the financing statement ceases to be effective at the earlier of:

(A) the time the financing statement would have ceased to be effective under [former Article 9]; or

(B) five years after this [Act] takes effect; and

(2) a continuation statement filed after this [Act] takes effect does not continue the effectiveness of the financing statement.

(f) A continuation statement filed after this [Act] takes effect and in the office specified in Section 9-501 is effective to continue the effectiveness of a financing statement filed in that office before this [Act] takes effect.

(g) A financing statement that includes a financing statement filed before this [Act] takes effect and a continuation statement filed after this [Act] takes effect is effective only to the extent that it satisfies the requirements of Part 5 for an initial financing statement.

SECTION 9-706. WHEN INITIAL FINANCING STATEMENT SUFFICES AS CONTINUATION STATEMENT.

(a) The effectiveness of a financing statement filed before this [Act] takes effect may be continued by filing in the office specified in Section 9-501 an initial financing statement complying with the requirements of subsection (b) if:

(1) the filing of a financing statement in that office is effective to perfect a security interest; and

(2) the pre-effective-date financing statement was filed in an office in another State or another office in this State.

(b) To be effective for purposes of subsection (a), an initial financing statement must:

(1) satisfy the requirements of Part 5 for an initial financing statement;

(2) identify the pre-effective-date financing statement by indicating the office in which the financing statement was filed and providing the dates of filing and file numbers, if any, of the financing statement and of the most recent continuation statement filed with respect to the financing statement; and

(3) indicate that the pre-effective-date financing statement remains effective.

SECTION 9-707. PERSONS ENTITLED TO FILE INITIAL FINANCING STATEMENT OR CONTINUATION STATEMENT. A person may file an initial financing statement or a continuation statement under this part if:

(1) the secured party of record authorizes the filing; and

(2) the filing is necessary under this part:

(A) to continue the effectiveness of a financing statement filed before this [Act] takes effect; or

(B) to perfect or continue the perfection of a security interest.

SECTION 9-708. PRIORITY.

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(a) *[Former Article 9] determines the priority of conflicting claims to collateral if the relative priorities of the parties were fixed before this [Act] takes effect. In other cases, this [Act] determines priority.*

(b) *For purposes of Section 9-322(a), the priority of a security interest that becomes a perfected security interest under Section 9-704 dates from the time the applicable requirements for perfection are satisfied. This subsection does not apply to conflicting security interests each of which becomes a perfected security interest under Section 9-704.*

(c) *For purposes of Section 9-322(a), the priority of a security interest that becomes enforceable under Section 9-203 of this [Act] dates from the time this [Act] takes effect if the security interest is perfected under this [Act] by the filing of a financing statement before this [Act] takes effect which would not have been effective to perfect the security interest under [former Article 9]. This subsection does not apply to conflicting security interests each of which is perfected by the filing of such a financing statement.*

Appendix V

Where to File

A Summary Chart Under Prior UCC Article 9-4

State	Most Personal Property		Special Personal Property			Realty Related
	Central Filing Office	Local Filing Office (Dual Filing State)	Farm Related	Consumer Goods	Crops*	Real Estate Filing (Local Personal Property Filing)**
AK	Department of Natural Resources		Local	Local	Local	District Recorder
AL	Secretary of State		Local	Local	Local	Judge of Probate
AR	Secretary of State	and Circuit Clerk	Local	Local	Local	Circuit Clerk
AZ	Secretary of State		Local	Local	Local	County Recorder
CA	Secretary of State		Central	Local	Local (Land)	County Recorder
CO	Secretary of State or County Clerk (Central Index)		Central	Central	Central	County Clerk & Recorder
CT	Secretary of State		Central	Central	Central	Town/City Clerk
DC	County Recorder		NA	NA	NA	County Recorder
DE	Secretary of State		Central	Central	Central	County Recorder
FL	Secretary of State		Local	Central	Local	Clerk of Circuit Court
GA	None (Central Index)	Clerk Superior Court	Central	Central	Central	Clerk of Superior Court
HI	Bureau of Conveyances					Bureau of Conveyances
IA	Secretary of State		Central	Local	Central	County Recorder
ID	Secretary of State		Central	Central	Central	County Recorder

	Most Personal Property	Special Personal Property	Realty Related
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Recorders' Guide to New Article 9-5

State	Central Filing Office	Local Filing Office (Dual Filing State)	Farm Related	Consumer Goods	Crops*	Real Estate Filing (Local Personal Property Filing)**
IL	Secretary of State		Central	Local	Central	County Recorder
IN	Secretary of State		Local	Local	Local	County Recorder
KS	Secretary of State		Central	Local	Central	Register
KY	Secretary of State (Out of state only)	County Clerk	Local	Local	Local	County Clerk
LA	None (Central Index)	Clerk of Court	Central	Central	Central	Clerk of Court
MA	Secretary of the Commonwealth	and Town/City Clerk	Local	Local	Local	Register of Deeds (Town Clerk)
MD	Department of Assessments & Taxation	and Clerk of Circuit Court (until 7/1/95)	Central	Central	Central	Clerk of Circuit Court
ME	Secretary of State		Central	Local	Local	County Register
MI	Secretary of State		Local	Local	Local	County Register
MN	Secretary of State or Recorder		Local	Local	Local	County Recorder
MO	Secretary of State	and County Recorder	Local	Local	Local	County Recorder
MS	Secretary of State	and Chancery Clerk	Local	Local	Local	Chancery Clerk
MT	Secretary of State		Central	Local	Central	Clerk & Recorder
NC	Secretary of State	and Register of Deeds	Local	Local	Local	Register of Deeds
ND	Secretary of State or County Register (Central Index)		Central	Central	Central	County Register
NE	Secretary of State (Out of state only)	County Clerk	Local	Local	Local	County Register
NH	Secretary of State	and Town/City Clerk	Local	Local	Local	County Register
NJ	Department of Revenue		Local	Local	Local	County Clerk/Register
NM	Secretary of State		Local	Local	Local	County Clerk
	Most Personal Property		Special Personal Property			Realty Related
State	Central Filing Office	Local Filing Office	Farm	Consumer	Crops¹	Real Estate Filing

Recorders' Guide to New Article 9-5

		(Dual Filing State)	Related	Goods		(Local Personal Property Filing) ²
NV	Secretary of State		Central	Local	Local	County Recorder
NY	Secretary of State	And County Clerk/Register	Local	Local	Local	County Clerk (Register) ³
OH	Secretary of State	And County Recorder	Local	Local	Local	County Recorder
OK	Oklahoma County Clerk		Local	Central	Local	County Clerk
OR	Secretary of State		Central	Central	Central	County Clerk
PA	Department of State	And Prothonotary	Local	Local	Local	County Recorder (Prothonotary)
RI	Secretary of State		Local	Central	Local	Town Recorder of Deeds
SC	Secretary of State		Local	Local	Local	County Register or Clerk of Court
SD	Secretary of State		Local	Central	Central	County Register
TN	Secretary of State		Local	Local	Local	County Register
TX	Secretary of State		Central	Local	Central	County Clerk
UT	Division of Corporations & Commercial Code		Central	Central	Central	County Recorder
VA	Corporation Commission	And Clerk of Circuit Court	Local	Local	Local	Clerk of Circuit Court
VT	Secretary of State	And Town/City Clerk (until 7/1/95)	Local	Local	Local	Town/City Clerk
WA	Department of Licensing		Central	Central	Central	County Auditor
WI	Department of Financial Institutions		Local	Local	Local	County Register
WV	Secretary of State		Central	Local	Central	County Clerk
WY	Secretary of State (Out of state and A/R only)	County Clerk	Local	Central	Local	County Clerk

Notes

1. Crops—If local filing is indicated, and unless otherwise indicated, crop filings are submitted to the counties where the debtor and the land is located, if they are different.
2. Local personal property filings are filed with the same official as realty related property unless a separate title is given in parentheses.
3. In New York, the statute reference to local filing reads “the office of the filing officer” without naming her title. In fact the county recorder is also the county clerk, so the distinction is moot. In New York City the filing officer is called the City Register.

Deleted: Appendix VIII—State Variations to Chapter 7 Recommendations

Appendix VI—UCC Drafting Committee

Here is a list of the people involved in drafting the revised UCC.

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Appendix VII—National Standard UCC Filing Forms

To obtain copies of the latest national standard forms, go to <http://lamb.sos.state.tx.us/sts/forms.htm>.

Appendix VIII—State Variations to Chapter 7 Recommendations

This appendix will quote and discuss variations to the language recommended for recording-related sections of new Article 9 as enacted by the states.

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