

Revised Article 9 of the Uniform Commercial Code: New Requirements For Financing Statement

Lenders, merchants, and other secured parties have long looked to the law of secured transactions (Uniform Commercial Code Article 9) to protect themselves from being in the position of an unsecured creditor in Bankruptcy. However, when not strictly followed, UCC Article 9 contained potentially devastating traps for the unwary lender who mistakenly believed that it had complied with the labyrinth of Article 9's filing requirements. Unfortunately, most lenders are familiar with the difficult process of trying to retrieve a debtor's property pledged to them as collateral for the performance of obligations, often times only to see it disappear into the hands of other creditors. UCC Article 9 has recently undergone its first major overhaul in 30 years, the goal of which was to make securitization simpler and to give secured parties greater immunity from involuntary bankruptcy petitions. No longer will a security interest need to be perfected in every jurisdiction where the property is located. The focus is on centralized filing. That and other significant changes mean that lenders, merchants and other secured parties are well-advised to review existing secured transactions to assure that they take advantage of the new, streamlined rules, and are protected from losing the perfection and priority of the security interests they hold in certain of their debtor's property during the transition period from the old law to the new one.

As of July 1, 2001, all 50 states plus the District of Columbia have adopted Revised Article 9 ("Revised Article 9" or the "Revision"), with the effective date in all but four of those jurisdictions also being July 1, 2001.¹ Revised Article 9 was introduced in New York on January 17, 2001 as Assembly Bill 1999, Senate Bill 1147² and became effective on July 1, 2001.

While the Revision makes extensive substantive changes to existing Article 9, with few exceptions (the most significant of which relates to the filing system discussed in this Article), these changes are not drastic. They are better likened to a pervasive fine-tuning. Helping the reader understand the changes, Revised Article 9 contains extensive Official Comments. These are invaluable aids to interpretation.

FILING UNDER REVISED ARTICLE 9

The most obvious changes brought about by Revised Article 9, and the changes that will impact every secured lender, are changes to rules governing the filing system established by Revised Article 9. Rules with respect to the proper location for filing financing state-

ments and their required content have changed in important respects.

Under prior Article 9, the law that governs the perfection of a security interest in collateral (and hence the proper state in which to file a financing statement) depends upon the nature of the collateral. In general, the rule is as follows: For tangible collateral (e.g., inventory and equipment), filing must be made in the state where the collateral is located. For intangible collateral (e.g., accounts and general intangibles), filing must be made in the state where the debtor is located. For this purpose, the debtor (if not a natural person) is located in the state in which its chief executive office is located.

Revised Article 9 introduces "**one-stop filing.**" Regardless of the nature of the collateral, filings must be made in the state in which the debtor is located.³ Perhaps even more significant, the "location" of the debtor has been redefined:

- If the debtor is a "registered organization" (such as a corporation, limited partnership, or limited liability company), it is deemed to be located in the state in which it is organized.

- If the debtor is an individual, the debtor is deemed to be located in the state of his or her "principal residence."

- For other debtors (e.g., most general partnerships), the debtor is deemed to be located in the state in which its chief executive office is located.

- A special rule applies to debtors located in a jurisdiction that does not require public filing as a condition of perfection (i.e., most of the world outside of the U.S. and Canada). For purposes of Revised Article 9, such a debtor is deemed to be located in the District of Columbia.

WHERE TO FILE; CONTENTS OF FILING

Under Revised Article 9, all filings must be made with the Secretary of State (or equivalent) of the relevant state, except that filings for real estate related collateral (i.e., fixtures, minerals) must still be made in the county where the real estate is located. There will be no other local filings.⁴

Revised Article 9 contains a uniform form of financing statement (UCC 1) that all jurisdictions will be required to accept.⁵ In order to assure that a financing statement will be accepted for filing, the following information should be included:⁶

- Debtor's name and address
- Secured party's name and address
- Type of organization

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- Jurisdiction of organization
- State organizational ID number
- Description of collateral
- Description of real estate (for fixture filings)

IMPORTANCE OF RULES REGARDING NAME OF DEBTOR

A financing statement that does not contain the exact name of the debtor in accordance with Revised Article 9 rules for debtor names will be completely ineffective if a search of the records of the filing office under the debtor's correct name, using the filing office's standard searching methodologies, would fail to disclose the financing statement.⁷ This standard is considerably stricter than under prior Article 9.

The Revised Article 9 rules regarding how the debtor should be identified on financing statements are:⁸

- If the debtor is a registered organization (e.g., corporation, limited partnership, or LLC), the name of the debtor will be the name shown on its organizational documents on file with the state.

- In almost all other cases (except trusts and estates), the name of the debtor will be, if the debtor has a name, the individual or organizational name, or if the debtor has no name, the names of the debtor's partners, members, associates, etc.

It is not necessary to file financing statements under trade names used by the debtor, and filing under a trade name is not sufficient for an effective financing statement.⁹

The stringent rules for debtors do not apply to secured parties. If the secured party's name on the financing statement is not seriously misleading, it will be sufficient.¹⁰

OTHER IMPORTANT INFORMATION ABOUT REVISED ARTICLE 9

Failure to provide a state ID number on a financing statement is grounds for a filing office to reject a filing.¹¹

The collateral description in the financing statement must indicate the collateral covered by the financing statement.¹² Revised Article 9 permits generic descriptions, such as "All assets of debtor," or "All assets of debtor, other than accounts."¹³ It also states that a description of collateral using the collateral categories in Revised Article 9 (e.g., inventory, equipment, accounts, general intangibles) is sufficient in a financing statement.¹⁴ Note that such generic descriptions are not permitted in security agreements.

The debtor's signature is no longer required on a financing statement. Financing statements must still be authorized in an authenticated record. By signing a security agreement, the debtor is deemed to have authorized the secured party to file financing statements (and any amendments) covering the collateral described in the security agreement.¹⁵ If authority is needed to file a financing statement that arguably covers more collateral than is covered by

the security agreement, specific authorization to do so should be included in the security agreement. Finally, the statute does not require that the requisite authorization be obtained prior to filing. A secured party may pre-file and obtain the authorization upon execution of the security agreement at a later time.

There are detailed transition rules for Revised Article 9 that are beyond the scope of this writing, but which prevent security agreements and financing statements already in place under former Article 9 from being rendered useless. However, because financing statements are typically only valid for 5 years, the transition rules must be looked at if extensions or renewals are anticipated.

CONCLUSION

Revised Article 9 simplifies the filing of financing statements by requiring that they be filed in the state where the debtor is located rather than the state or states where the collateral is located. Furthermore, Revised Article 9 provides for filing only in the Office of the Secretary of State (or equivalent) and eliminated local filings, except in limited cases (e.g., fixtures). Revised Article 9 also eliminates the need for a debtor's signature on a financing statement, although it does require that the filing of financing statements be authorized in a written record by the debtor. General collateral descriptions are permitted in financing statements, but not in security agreements. Finally, Revised Article 9 sets forth a standard form of financing agreement. Currently used forms will not be compatible with the new requirements under Revised Article 9 and will not be accepted for filing at any time after Revised Article 9 becomes effective in New York State.

¹ The Uniform Commercial Code is state law. Although UCC law is developed and approved by national organizations, it is up to each state to determine whether - and in what form - to enact the Articles of the UCC.

² In this Article, "Revised Article 9" refers to the Official Text of Revised Article 9, rather than New York's codification. New York, like other states, enacted their own unique version of Revised Article 9 legislation which incorporates certain elements of the model act while leaving others out.

³ Rev. §§9-301, 9-501.

⁴ Rev. §§9-301, 9-501.

⁵ Rev. §9-521(a).

⁶ Rev. §9-516(b).

⁷ Rev. §§9-503(a), 9-506(c).

⁸ Rev. §9-503(a).

⁹ Rev. §§9-503(b), 9-503(c).

¹⁰ Rev. §9-506(a).

¹¹ Rev. §9-516(b)(5).

¹² Rev. §§9-108, 9-504.

¹³ Rev. §9-504(2).

¹⁴ Rev. §9-108(b).

¹⁵ Rev. §§9-509(a)(1), 9-509(b).

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