



# Ernst Publishing Co., LLC

*Publications for Legal and Financial Professionals*

## “UCC Revised Article 9 Alert”

### The Only Practical Filing and Searching Guide

Revised Article 9 is the law of UCC filing in all states. Between July 1, 2001 and January 1, 2002, “RA9” became effective in all states and the District of Columbia. The new law **requires significant changes in your filing and searching procedures based on provisions of new Part 5 (Filing) and Part 7 (Transition Rules) of revised Article 9.**

To address the impact of this major revision, we developed *UCC REVISED ARTICLE 9 ALERT*, a subscription service consisting of a series of articles that explain practical aspects of revised Article 9 for those who prepare, file and search UCC financing statements.<sup>1</sup>

*UCC ALERT* is designed to bring you up to speed to prepare initial UCC financing statements, to amend UCC filings that were filed prior to the RA9 effective date (i.e. preparing "in lieu" UCC-1s) and to conduct UCC and related searches in this new environment. As in *The UCC Filing Guide*, *UCC Alert* provides State Summary sections and charts. These Summaries and Charts synopsise specific law variances among the states (there are some very dangerous ones) and summarize how the law is to be implemented in each state.

*UCC ALERT* is published as a subscription service with periodic updates and installments. The publication provides more than 800 pages of information about preparing and filing UCC financing statements and amendments for both new filings and for transition of filings from old to revised Article 9.

#### Subjects included:

“**WHERE TO FILE**”—The “where to file” rules under revised Article 9 are in many instances **entirely different from the old rules**. The fact that some states have not enacted the revised law with a July 1, 2001 effective date further complicates the “where to file” rules for interstate transactions.

“**VARIATIONS ON A MODEL**”—Each state has the option of enacting **nonstandard language changes to the model act**. You will need to know whether a state has enacted peculiar local variations that can trip up the unsuspecting UCC preparer. Significant filing variations statutes are summarized in individual state sections.

“**HOW TO PREPARE THE NEW NATIONAL STANDARD UCC FORMS**”—The new forms are accepted as standard in almost all filing offices nationwide. Preparation requires information that was not needed under old Article 9. Special considerations not contained in the law apply to fixture, timber and mineral filings.

“**TRANSITION RULES**”—Transitioning filings from old to revised Article 9 can be a nightmare. We take the mystery out of deciding when and how to amend your old filings in the right place at the right time on the right form.

*Update installments will include as needed:*

- *clarification of issues discussed in earlier installments*
- *how state administrative rules will impact your searching and filing policies and procedures*
- *changes in how you will need to conduct UCC and related searches to protect your institution against litigation losses*

An annual subscription to *UCC ALERT* is available [call for \$]<sup>2</sup>. Initial subscription materials are shipped in two loose-leaf binders, and updates and newsletters are mailed periodically. Subscription also includes access to a searchable online PDF version of the publication. Call Subscriber Services at 800-345-3822 for further information or to enter your subscription.

<sup>1</sup> You will be inundated during coming months with offers for publications that deal with the legal aspects of revised Article 9. *UCC ALERT*, on the other hand, is not a legal publication. Like our publication, *The UCC Filing Guide*, *UCC ALERT* will provide you with practical filing and searching advice by answering your "where" and "how to" questions.

<sup>2</sup> Price accommodation available to current subscribers to any full version of *The UCC Filing Guide*. Plus shipping and handling, and applicable sales taxes in NY.

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Our Other Publications Include—

*The Uniform Commercial Code Filing Guide, The Real Estate Recording Guide, and National Release Guide*

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## **Do You Know?**

Do not kid yourself that you will be immune from disaster under revised Article 9 if you just keep on filing and searching according to the high standards you have in place today. Although we too wish that were true, the transition will not be that simple. In fact, the more you know about revised Article 9, the more you will see that extreme care will be required during the next five (5) to ten (10) years to get both your searching and filing practices right. Otherwise you will find many of your secured loans, leases, etc. are in fact not properly secured. **Revised Article 9 will provide your company with many opportunities to unwittingly turn your company into an unsecured lender.**

Are you comforted that your attorneys say they will provide the guidance you need to avoid the pitfalls awaiting the unwary filer or searcher? It is our experience that many attorneys who have not been involved in UCC litigation with respect to filing and searching practices, although well versed in the legal aspects of the UCC, underestimate the policies, procedures and practices that are necessary to prepare and file UCC forms and search on debtor names under revised Article 9 so that your company is not the one that ends up in court trying to defend its indefensibly unperfected security position.

### **Test Your Expertise**

Here are some questions, the answers to which you need to know in order to file and search under revised Article 9. We present them here for your consideration because we frankly believe that there is no other publication that will provide you with the answers to many of these questions.

#### **Filing**

1. All lenders—Which state(s) will continue to require signatures on UCC forms or non-uniform notice to debtors?
2. All lenders—What special rules will apply to “in lieu of” filings in states that were formerly dual filing states?
3. All lenders—In which state(s) is a secured party possibly subject to criminal penalties for filing a financing statement without first obtaining permission of the debtor?
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*(Continued next page.)*

## ***UCC REVISED ARTICLE 9 ALERT***

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### **Do You Know?** *Continued.*

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As experts in the practical application of both the UCC statute and associated administrative rules in each state, we are offering our new publication, *UCC Revised Article 9 Alert*, not only to answer these questions, but also to help you develop comprehensive policies, procedures and practices to avoid the filing and searching pitfalls that exist as of July 1, 2001.

Our staff is available to conduct seminars to explain the practical aspects of dealing with revised Article 9, and to perform audits of your searching and filing policies, practices and procedures based on the recommendations that appear in *UCC Alert*.

P.S. You can continue to depend on our sister publication, *The UCC Filing Guide*, to keep you informed of the significant changes that will take place in fees starting July 1, 2001. However, do not depend on this publication for your planning. That you must start today with *UCC Alert*.

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***Next installment will include:***

- Proposed National Standard Search Request Form
- Proposed Standard Filing Office Correction Form
- Proposed Standard Debtor Correction Form

**Index**

***Future installment will include:***

- Introduction, Rev. Article 9 References, Text References

The reason for filing under Article 9 of the Uniform Commercial Code is to provide public notice of liens on personal property. UCC and other forms of lien filings are the rough equivalent of mortgages recorded to secure interests in real property.

In this chapter we consider two situations of interest to preparers of UCC financing statements. First, we summarize the filing requirements attached to the types of collateral covered by Article 9. Second, we review some other types of collateral the preparer may run across that are not covered under Article 9.

**1. UCC Collateral**

There are 25 different categories of collateral defined in Rev. Article 9, and there are a number of ways that an interest in each type of collateral can be perfected.

Here, listed in alphabetical order, is a chart listing how and where to perfect a security interest in each of the categories of collateral. For a concise definition of each type of collateral, we recommend Clark, *Special Report*, Chapter 2.

**Explanation of Columns**

**Type of Collateral**—Name of the category of collateral.

**File to Perfect**—When a method to perfect a security interest includes filing, that is indicated.

**Based on**— If filing may be used to perfect, filing location is based either on the location of the debtor, as discussed in chapter xx, or on the location of the collateral.

**UCC Filing Office**—If filing may be used to perfect, the filing office is based on the location of the debtor or of the property, depending on the type of collateral. The two choices, generally speaking, are the central filing office in the state in which the debtor is located, or the location of the real estate on which the collateral is located. See chapter xx for a full discussion of the where to file rules. “Land recording” means the local recording office for the real estate on or under which the collateral is located.

**Comments**—If there are other ways to perfect an interest in a type of collateral, they are indicated in the comments column, along with special requirements for certain types of filings.

Type of Collateral	File to Perfect	Based on	UCC Filing Office	Comments
Accessions	Yes	Debtor location	Central	May perfect by possession or notation of lien on certificate of title.
Accounts	Yes	Debtor location	Central	
As-Extracted collateral	Yes	Collateral location	Land Recording	Must include description of real estate on financing statement and be recorded in real estate index.
Chattel paper-tangible	Yes	Debtor location	Central	May perfect by possession.
Chattel paper-electronic	Yes	Debtor location	Central	May perfect by control.
Commercial tort claim	Yes	Debtor location	Central	Collateral description must specifically identify the claim.
Commingled goods	Yes	Debtor location	Central	May perfect by possession.

## UCC REVISED ARTICLE 9 ALERT

### Revised Article 9 Section Summary

The following chart lists the names of each Parts of Rev. Article 9, and identifies specific sections that we think are of special significance to those who prepare and file UCC forms.

In order to help you get to other information you may need to review in Rev. Article 9, see a special appendix listing just the section heading for quick browsing.

New Section	Equivalent Old Section	Title	Content
Part 1 9-102	9-105, 9-106, 9-301(3), 9-306(1), 9-115, 2-326(3)	Definitions and General Concepts Definitions and Index of Definitions	Significant new definitions are summarized in xx.
9-103 9-108	9-107 9-110, 9-115(3)	Purchase-Money Security Interest Sufficiency of Description	New definition. Collateral descriptions on UCC financing statement given more leeway than in security agreements. Not significant to filing.
Part 2	Part 2	Effectiveness of Security Agreement; Attachment of Security Interest; Rights of Parties to Security Agreement.	
Part 3 <sup>1</sup> 9-307	Part 3 9-103(3)(d)	Perfection and Priority Location of Debtor	Significant change of and expansion to old rule.
9-309	9-302(1), 9-115(4)(c), (d), 9-116	Security Interest Perfected Upon Attachment	Lists collateral that does not require filing for perfection. <sup>2</sup>
9-311	9-302(3), (4)	Perfection of Security Interest in Property Subject to Certain Statutes, Regulations, and Treaties	When filing is not necessary with respect to certificate of title goods and other situations.
9-317	9-301, 2A-307(2)	Interests that Take Priority Over or Take Free of Unperfected Security Interests or Agricultural Liens	Rules to obtain PMSI priority over buyers and unperfected liens. Applies 20 day rule.
9-324	9-312(3), (4)	Priority of Purchase-Money Security Interests	Rules to obtain PMSI priority over otherwise perfected liens. Applies 20 day rule to non-consumer goods not including inventory and livestock.
9-334	9-313	Priority of Security Interests in Fixtures and Crops	Rules to obtain fixture and crop priority in general over real estate interests, and PMSI priority for fixtures in particular, applying the 20 day rule.

[Sample table only, not complete.]

<sup>1</sup> Certain sections also deal with perfection and priority with respect to agricultural liens, which is a special subject not covered in depth in this publication.

<sup>2</sup> The first item is consumer goods. Although this section suggests consumer goods do not require filing for perfection, a decision must still be made regarding whether to file because only filing will prevent a buyer of the goods from the debtor from taking them free of the security interest. See also Rev. UCC § 9-320. For a summary of all 25 categories of collateral under Rev UCC §9, see Clark paperback in the Bibliography, Appendix xx

Effective Date: July 1, 2001

Bill No: S.B. 1058

Effective Period: five (5) years

Date Enacted: June 18, 1999

### **Filing Rules**

Filing Methods: Mail, courier, **fax, EDI, Web**

Types of Collateral: Uniform; **Farm product filings centralized as of July 1, 2001**

Debtor Location: Uniform

Where to File: Uniform

UCC Forms: Uniform; **Special state form also accepted**

Multiple Changes Accepted: **Yes**

Continuation Rule: Uniform

Transition Rules: Uniform

**PMSI Filing:** Uniform—Goods: 20 days; Fixtures: 20 days

County Filing: **Special forms required**

Fees: No change, except **web filing fee is flat \$5.00**

Other Non-uniform Practices: **Signatures required on UCC-1**

### **Indexing/Searching Rules**

#### **1. Indexing**

Business Name Entry: Uniform

Individual Name Entry: Uniform

Other Name Entry: Uniform

#### **2. Searching**

Searching Methods: Search request (\$), **web ([www.sos.state.xx.us](http://www.sos.state.xx.us))**

Request form: Uniform

Standard Search Logic:

Business Names: Uniform

Individual Names: **Middle initials handling non-standard**

Other: **Web site does not have standard search logic**

Search by Address: No

Fees: No change; **No charge for web search**

### **Filing Checklist**

1. Always use the standard forms.
2. Never put two names in one box on UCC forms.
3. Always include stamped, self-addressed envelope with paper filings.