

# **UCC Revised Article 9 Alert**

## **Policy and Practice Recommendations**

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Each chapter contains policy and practice recommendations, presented in the context of the subject matter of the chapter. Each recommendation is numbered according to the Part and Chapter in which it appears, followed by a consecutive number within the chapter. For example, 1-2.3 is the third recommendation in Chapter 2 of Part 1.

These recommendations reprinted below are sorted for use as checklists to assure that your operating policies, practices and procedures address all the decisions you need to make in order to prepare for transition to Rev. Article 9 and to file properly under Rev. Article 9.

The recommendations are presented in three major categories:

- (1) Pre-effective Date Filing Review, and
- (2) Transition Filings
- (3) Filing under Rev. Article 9.

The headings under each of these categories include: General, Collateral Issues, Debtor Name, Debtor Location, When to File, Forms Preparation, Recordkeeping, Realty-Related Filings, and Secured Party Issues.

Recommendations may be repeated in more than one category where applicable.

### **1. Pre-effective Date Filing Review**

#### **A. General**

##### **1-1.1 Policy Recommendation**

Competent legal counsel will review, prior to the effective date of Rev. Article 9 in each state, the wording of all security agreements in effect and of all collateral descriptions used in active and proposed financing statements in order to determine,

- (1) whether amendments are necessary to any active filings pre- or post-effective date to bring them into compliance with Rev. Article 9, and
- (2) whether collateral descriptions need to be altered in initial financing statements filed pre- or post-effective date.

##### **2-1.1 Practice Recommendation**

The following steps summarize the process necessary to establish reasonable UCC filing policies and procedures for preparing to transition to Rev. Article 9.

- (1) Review and understand current filing policies and practices,
- (2) Review and understand the impact of changes in Rev. Article 9 to filing policies and practices,
- (3) Assess the legal risk, based on the type and size of transactions for which filing is required, of failing to comply with Rev. Article 9,
- (4) Develop revised UCC filing policies and practices based on the level of risk,
- (5) Review compliance of currently active UCC filings with the revised policies and procedures, and
- (6) Take action to correct any deficiencies in currently active UCC filings to assure their continued perfection under Rev. Article 9.

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## B. Collateral Issues

### 2-2.1 Policy Recommendation

Legal counsel will review prior to the effective dates of Rev. Article 9 in each state all collateral descriptions used and to be used in order to determine,

- (1) whether the method of perfection for any collateral securing transactions will change under Rev. Article 9,
- (2) whether collateral descriptions in pre-effective date filings should include collateral that is newly covered by filing under Rev. Article 9,
- (3) whether collateral descriptions in pre-effective date filings need to be amended to remain effective post-effective date, and
- (4) how collateral descriptions in new pre-effective and post-effective date financing statements should be revised to take advantage of Rev. Article 9.

### 2-2.5 Policy Recommendation

The extent of due diligence with respect to ownership of collateral will be commensurate with the size and type of secured transaction.

### 2-5.2 Practice Recommendation

Approved procedures will be followed for determination of ownership interests and correct debtor names, based on policies 2-2.5 and 2-5.1

### 2-2.2 Policy Recommendation

If you lend against minerals or timber, develop specific filing and searching rules to assure that security interests carry over from the ground to the truck.

### 2-2.3 Policy Recommendation

Many categories of collateral named in this chapter require special handling. Any transactions involving these types of collateral will be reviewed with legal counsel before processing.

### 2-2.4 Policy Recommendation

If it is determined that more than one entity may have an ownership interest in collateral, consult with legal counsel concerning the entity names to include in security agreements and in UCC financing statements.

## C. Debtor Name

### 2-5.1 Policy Recommendation

The extent of due diligence with respect to the name(s) of a debtor will be commensurate with the size and type of secured transaction.

### 2-2.5 Policy Recommendation

The extent of due diligence with respect to ownership of collateral will be commensurate with the size and type of secured transaction.

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**2-5.2 Practice Recommendation**

Approved procedures will be followed for determination of ownership interests and correct debtor names, based on policies 2-2.5 and 2-5.1

**2-3.2 Practice Recommendation (revised 6/01)**

Code by debtor name formats and type of debtor all debtor names on *pre-effective* financing statements and to be entered on *post-effective* financing statements.

**2-3.3 Practice Recommendation**

A. Perform a full *review* of all *pre-effective* date filings that contain trust, estate and unregistered organization names to determine the incidence of errors in the type and name formats of active debtor names.

B. Amend all these filings that do not contain any debtor name that is in the proper format under Rev. Article 9. (If a filing contains one entry that is the right format, other entries may be ignored.)

**2-8.12 Policy Recommendation**

Debtor name corrections will be filed prior to the effective date of Rev. Article 9 for all debtor names on *pre-effective* date filings that are found to be other than exactly correct.

**D. Debtor Location**

**2-4.1 Policy Recommendation**

The location of each debtor listed or to be listed in a financing statement will be determined according to the rules stated in Rev. Article 9, and the location coded in the debtor record.

**2-4.2 Practice Recommendation**

A standard checklist will be prepared for use in determining the location of each debtor on whom a financing statement has been or may be filed.

**E. When to File**

**2-8.9 Policy Recommendation**

A. UCC filings that lapse within four months after effective date (before November, 2001)—File continuations in the proper place under old Article 9.

B. UCC filings that lapse more than four months after effective date (after October, 2001)—File continuations in the proper place under Rev. Article 9.

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## F. Forms Preparation

### 1-1.2 Policy Recommendation

Starting immediately,

- A. All UCC forms will be prepared and filed in accordance with Rev. Article 9 in order to assure **perfection** under the new law.
- B. Whenever information on a filing changes to the extent that the filing would become “seriously misleading,” an amendment will be filed immediately.
- C. Whenever applicable to assure **priority**, an accurate search (or searches) of the appropriate UCC index will be performed at the proper time.

## G. Recordkeeping

### 2-8.7 Practice Recommendation

Code each filing reviewed as follows:

- (1) that meets the criteria of No Action Rules 1-3, by rule number.
- (2) that does not meet Rules 1-3, by indicated type of change (termination, continuation or amendment).
- (3) that does not meet Rules 1-3, if filing is part of a dual filing, is a local only filing for consumer goods, or is a local only filing for farm-related collateral.

### 2-8.10 Practice Recommendation

Reset lapse date to December 31, 2005 for all *pre-effective* date filings that under old Article 9 would have a later lapse date in the state of Vermont.

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## **2. Transition Filings**

### **A. Where to File**

#### **2-8.8 Policy Recommendation**

Based on opinion of legal counsel, establish one of the following alternate policies with respect to the handling of *pre-effective* date, local filings in dual filing states:

- A. Ignore these local filings after effective date of Rev. Article 9 in the state.
- B. Treat these local filings like any other filings where the filing office has changed under Rev. Article 9. Filer “in lieu of” financing statements when necessary at the central filing office

#### **2-8.3 Practice Recommendation (Revised 6/01)**

A. A filing in the central filing office of a state where “termination in place” is allowed may always be terminated in the filing office where it was originally filed, whether or not the debtor is located in that state under Rev. Article 9, unless an “in lieu of” replacement financing statement has already been filed in another state. See Section 6 Chart 1 for a list of the central offices where “termination in place” is not allowed.

B. To terminate a filing originally filed in a former local filing office that no longer exists under Rev. Article 9, file an “in lieu of” replacement financing statement in the proper central filing office determined under Rev. Article 9, and then terminate the “in lieu of” filing.

#### **2-8.6 Practice Recommendation (Revised 6/01)**

If a filing originally filed in a central filing office is anticipated to be subject only to termination, and Rev. Article 9 in the state where the *pre-effective-date* filing is active has enacted the latest version of model Rev. UCC §9-707(e), the filing can be terminated under Rev. Article 9 in the original filing office.

#### **2-8.13 Practice Recommendation (new 6/01)**

Never file any non-realty-related *amendments* in a local filing office except in states where Rev. Article 9 specifically provides for the effectiveness of such filings in the transition statute.

### **B. When to File**

#### **2-8.0a Practice Recommendation (New 6/01)**

All inaccurate<sup>1</sup> information on a *pre-effective-date* filing will be corrected before, concurrent with or immediately after filing any *amendment* (including continuation, but not termination) under Rev. Article 9.

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<sup>1</sup> The use of the word “inaccurate” may made some attorneys uncomfortable because the changes, they fear, may act as an admission that the filing was “seriously misleading” under old Article 9. We suspect that most of the inaccuracies corrected will not rise to that level except in the instance where the debtor name was so far off from the correct legal name that a “reasonably diligent searcher” would not have found the filing. Of course, in that case, the filing was in fact no damn good anyway. In any event, there is no way to hide prior inaccuracies in filings when any

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### 2-8.1a Practice Recommendation (New 6/01)

When required to file a change to a *pre-effective-date* filing under Rev. Article 9 in the original filing office, also file amendments to correct any inaccurate information, as required by Rev. UCC §9-705(f). This recommendation applies to both central office filings and to realty-related filings at recording offices.

### 2-8.4 Practice Recommendation

If a properly perfected, *pre-effective* date UCC filing is expected to lapse without change, no matter where it was originally filed—centrally, locally or in a dual filing state—no further transition review is necessary unless and until it becomes necessary to *amend* the filing .

### 2-8.5 Practice Recommendation

If the sole filing office for a properly perfected, *pre-effective* date UCC filing remains the same under Rev. Article 9, file *post-effective* date amendments<sup>2</sup> under Rev. Article 9 rules. If either the debtor name, the secured party name, or the collateral description is not compliant with Rev. Article 9 at the time of the first *post-effective* date amendment, also file changes to the misinformation as well.

### 2-8.9 Policy Recommendation

A. UCC filings that lapse within four months after effective date (before November, 2001)—File continuations in the proper place under old Article 9.

B. UCC filings that lapse more than four months after effective date (after October, 2001)—File continuations in the proper place under Rev. Article 9.

### 2-8.10 Practice Recommendation (New 6/01)

A. Do not at this time reset the lapse date on any *pre-effective* date filings or continuations. Compute the lapse dates as usual according to old Article 9 rules.

B. Place a notation in your tickler file for July 1, 2005 to review at that time how the legal community views the two interpretations of lapse date under Rev. UCC §705(c)(2).

### 2-8.11 Practice Recommendation (New 6/01)

Reset lapse date to the Rev. UCC §9-705(c)(2) date for all *pre-effective-date* filings in the state that

- (1) have a later computed lapse date, and
- (2) will have a different filing office under Rev. Article 9.

### 2-8.12 Practice Recommendation (New 6/01)

Compute the lapse date on *post-effective-date* continuations of *pre-effective* date filings based on Rev. Article 9—that is, rolling five years from initial filing date—not based on old Article 9

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amendment is filed under Rev. Article 9. The incorrect debtor name problem is discussed in Part 2 Chapter 5 and in Part 4.

<sup>2</sup> Remember that amendments include continuations in this instance.

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rules. (This recommendation only affects same-office filings in Arizona and Maryland since all other states already have five-year lapse dates.)

#### **C. Forms Preparation**

##### **2-8.0a Practice Recommendation (New 6/01)**

All inaccurate<sup>3</sup> information on a *pre-effective-date* filing will be corrected before, concurrent with or immediately after filing any *amendment* (including continuation, but not termination) under Rev. Article 9.

##### **2-8.1a Practice Recommendation (New 6/01)**

When required to file a change to a *pre-effective-date* filing under Rev. Article 9 in the original filing office, also file amendments to correct any inaccurate information, as required by Rev. UCC §9-705(f). This recommendation applies to both central office filings and to realty-related filings at recording offices.

##### **2-8.1 Practice Recommendation (Revised 6/01)**

A. Prepare “in lieu of” replacement financing statements as if they are initial financing statements. Include the required continuation wording and a list of all initial financing statements (and latest related continuation statements) to be continued by this filing. Legal counsel should decide whether related change filings should also be listed.

B. Treat “in lieu of” replacement financing statements as new UCC1’s for the purpose of computing lapse dates.

##### **2-8.2 Practice Recommendation**

###### **Alternative A**

When an “in lieu of” replacement financing statement is prepared, changes to information on the *pre-effective* date filing will be corrected on the “in lieu of” form.

###### **Alternative B**

When an “in lieu of” replacement financing statement is prepared, current information from the *pre-effective* date filing will be duplicated on the “in lieu of” form. Any changed information will be corrected in a separate amendment to the “in lieu of” financing statement.

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<sup>3</sup> The use of the word “inaccurate” may made some attorneys uncomfortable because the changes, they fear, may act as an admission that the filing was “seriously misleading” under old Article 9. We suspect that most of the inaccuracies corrected will not rise to that level except in the instance where the debtor name was so far off from the correct legal name that a “reasonably diligent searcher” would not have found the filing. Of course, in that case, the filing was in fact no damn good anyway. In any event, there is no way to hide prior inaccuracies in filings when any amendment is filed under Rev. Article 9. The incorrect debtor name problem is discussed in Part 2 Chapter 5 and in Part 4.

## 3. Filing under Rev. Article 9

### A. General

#### 2-7.1 Policy Recommendation

The operating goal is no rejected UCC filings.

#### 2-7.2 Practice Recommendation

Each rejected UCC filing will be analyzed by type of error, and operating procedures will be adjusted to eliminate the cause of each error.

#### 2-7.7 Policy Recommendation

A UCC financing statement will never be filed without the authorization of all the named debtors. This authorization must be in the form of “an authenticated record,” which is a Rev. Article 9 phrase that includes written or electronic authorization.

### B. Debtor Name

#### 2-5.1 Policy Recommendation

The extent of due diligence with respect to the name(s) of a debtor will be commensurate with the size and type of secured transaction.

#### 2-3.1 Policy Recommendation (Revised 6/01)

Under Rev. Article 9, always determine the type of debtor and the formats of debtor name prior to searching in a UCC index and/or preparation of financing statements.

#### 2-3.0a Practice Recommendation (New 6/01)

When an individual debtor name associated with an estate, trust or unregistered organization is required to be entered on a UCC form, enter the name properly as a debtor in the individual name fields, and also enter the name in first-middle-last name order as a separate debtor name in the organization field. In both cases, indicate the nature of the organization on the form.

#### 2-3.0b Practice Recommendation (New 6/01)

When there is any doubt about whether a business is organized as a sole proprietorship owned by one individual, enter both the debtor’s individual name and the business name as debtors on the UCC form.

#### 2-4.3 Practice Recommendation

When it is discovered that a debtor has changed its name, an amendment will immediately be filed to change the name on all active filings.

#### 2-4.4 Practice Recommendation

When it is discovered that a debtor has changed its form of organization, or has sold collateral to a person within its jurisdiction, an amendment will immediately be filed to change the name on all active filings.

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#### **2-4.6 Practice Recommendation**

When it is discovered that a debtor has transferred collateral to a new debtor in another jurisdiction, an initial financing statement will immediately be filed under the name of the new debtor in the new jurisdiction, referencing the filing in the former jurisdiction.

#### **2-4.7 Policy Recommendation**

Depending on the size and type of secured transaction, each filing is assigned a four or 12 month debtor name check cycle.

#### **2-4.8 Practice Recommendation**

Appropriate resources will be utilized according to the debtor name check cycle for each filing to determine whether any changes that require amendment of debtor information have occurred.

#### **2-4.11 Policy Recommendation**

When uncertain as to the format of a debtor name, enter both formats of debtor name in the internal record for this debtor. If this results in debtors being located in different states, apply policy 2-4.10.

#### **2-4.12 Practice Recommendation**

In implementing policies 2-4.11 and 2-4.10, file in all combinations of state and debtor name formats. Thus, in the case of a trust where the trust may be named under the law of State A and the settlor lives in State B, file under both debtor names in both states. The properly formatted debtor names will appear in both individual and organization indexes.

#### **2-5.2a Practice Recommendation (Mew 6/01)**

To determine the name of a registered organization, trust only the articles of organization, as amended. Use a computerized index only to confirm the name and to obtain related information.

#### **2-5.3 Policy Recommendation**

The exact, correct name of a registered debtor includes the organizational ending in the form the debtor name was registered.

#### **2-5.4 Practice Recommendation**

Verify that the exact name of an organization debtor as it appears on the public record or original documents that created the organization agrees with the debtor name as entered on the UCC financing statement, and code the type of organization and registration number of the organization.

#### **2-5.5 Policy Recommendation**

The names of individual debtors will be determined according to a consistent rule.

#### **2-5.6 Practice Recommendation**

An individual debtor name will consist of a first name; middle name if available, or middle initial if debtor has a middle initial that is used in available documentation; a last name; and a suffix only if it is a title of lineage (Jr., III, etc.).

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## C. Debtor Location—Where to File

### 2-4.1 Policy Recommendation

The location of each debtor listed or to be listed in a financing statement will be determined according to the rules stated in Rev. Article 9, and the location coded in the debtor record.

### 2-4.0 Practice Recommendation (New 6/01)

Subject to opinion of legal counsel, file at all possible locations per the table in Part 2 Chapter 4 Section 2 for the following types of debtor: (1) trust; (2) estate; and (3) sole proprietorship.

### 2-4.2 Practice Recommendation

A standard checklist will be prepared for use in determining the location of each debtor on whom a financing statement has been or may be filed.

### 2-4.5 Practice Recommendation

When it is discovered that a debtor has moved to another jurisdiction, an initial financing statement will immediately be filed in the new jurisdiction, referencing the filing in the former jurisdiction.

### 2-4.10 Policy Recommendation

If the debtors in a transaction may be located in different states, separately determine where to file for each possible debtor location.

### 2-4.12 Practice Recommendation

In implementing policies 2-4.11 and 2-4.10, file in all combinations of state and debtor name formats. Thus, in the case of a trust where the trust may be named under the law of State A and the settlor lives in State B, file under both debtor names in both states. The properly formatted debtor names will appear in both individual and organization indexes.

## D. When to File

### 2-4.9 Policy Recommendation

Financing statements will only be filed in states where they will be effective immediately based on the current UCC in effect in the states where the debtor and collateral are located. Financing statements will not be filed in states where they will not immediately be effective. In the instance where following the “where to file” rules in two states would result in no filing anywhere, financing statements will be filed in both states.

## E. Forms Preparation

### 2-6.1 Policy Recommendation

The standard filing forms will always be used, except in those states or filing offices where these forms are not accepted.

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#### **2-6.2 Policy Recommendation (Revised 6/01)**

Never enter a taxpayer identification number or social security number on a UCC form, except in the states that require it per Section 6 Chart 3.

#### **2-6.3 Practice Recommendation (Revised 6/01)**

Always complete all the organizational items on a UCC1 or UCC3 for any debtor defined as an organization under UCC §1-201(28), whether or not the debtor is registered, and whether or not the debtor name is formatted as an individual.

#### **2-6.4 Practice Recommendation**

Always include the filing date of the initial financing statement and the secured party name somewhere on an amendment form.

#### **2-6.5 Practice Recommendation**

To avoid inadvertent errors, enter only one type of amendment per amendment form, even if the filing office allows multiple amendments on one form.

#### **2-6.7 Policy Recommendation**

A list of non-uniform Rev. Article 9 provisions will be maintained by state, and operating practices will be developed so that these provisions are followed in the applicable states.

#### **2-6.8 Policy Recommendation**

Fax and on-line filing will be utilized wherever available because these filing methods can significantly reduce costs and turnaround times.

### **F. Recordkeeping**

#### **2-4.13 Practice Recommendation**

A. The filing number and filing date assigned by the filing office to an initial financing statement will be accurately databased from the acknowledgement for use on *subsequent filings*. The filing number and filing date assigned by the filing office to a *subsequent filing* will also be databased from the acknowledgement.

B. When an *amendment* is prepared, the initial filing number and date entered on the form will be verified to the initial financing statement before the amendment filing is submitted to the filing office.

#### **2-8.11 Practice Recommendation**

Set lapse date to June 30, 2006 (December 31, 2005 in Vermont) for all new financing statements and continuations filed after June 30, 2001 in states where Rev. Article 9 is not yet effective.

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## G. Realty-Related Filings

### 2-6.6 Practice Recommendation

Fixture and other filings required to be filed in real estate records at local recording offices will be prepared on the national standard forms wherever they are accepted, and will include all the information stated in *UCC Alert* Part 2, Chapter 6, Section 6.

## H. Secured Party Issues

### 2-7.3 Practice Recommendation (Interpretation A—Rev. UCC §9-507(b))

If a filing is *amended* for some other reason after the name of the secured party changes, file a change of secured party name at that time.

### 2-7.3 Practice Recommendation (Interpretation B—Rev. UCC §9-507(b))

It is not necessary to submit an *amendment* to change a secured party name as long as the address remains the same as stated on the initial financing statement.

### 2-7.4 Practice Recommendation

Always use a post office box as the secured party mailing address.

### 2-7.5 Practice Recommendation

Except in unusual circumstances, only one, lead secured party in a multiple secured party transaction will be listed on a financing statement.

### 2-7.6 Policy Recommendation

If it is determined that a filing contains a fraudulent or erroneous termination statement or correction statement, an *amendment* will be filed to correct the inaccurate information.

### 2-7.8 Policy Recommendation

A termination statement will be filed within 20 days of the payoff date of any consumer loan on which a financing statement is outstanding.

### 2-7.9 Policy Recommendation

Once a non-consumer transaction is completed, a termination statement will be filed within 20 days of receiving a request from the former debtor..

### 2-7.10 Policy Recommendation

All other secured debtor requests will be responded to within 14 days.

### 2-7.11 Practice Recommendation (New 6/01)

When amending (including continuing, but not terminating) an initial financing statement filed under Rev. Article 9, always correct any inaccurate debtor or secured party information, whether or not the correction is required by statute, to assure that searchers will find the filings and will be able to communicate with you when necessary.

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