

QUICK PRACTICAL GUIDE TO REVISED ARTICLE 9

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A major revision of Article 9 of the Uniform Commercial Code, goes into effect on July 1, 2001. This article gives a general overview of some of the changes. Specific questions should be addressed to an attorney licensed to practice in the appropriate jurisdiction.

The Uniform Commercial Code is drafted by a private organization called the National Conference of Commissioners on Uniform State Laws. The goal is to have uniform rules governing commercial transactions throughout the United States. Realization of this goal depends on each separate state adopting the Uniform Code, and some states decline to adopt various revisions, or they make small changes in the uniform text.

Article 9 of the Uniform Commercial Code, which governs security interests in personal property, had last been revised in 1972, and for the past several years the Conference has been drafting and promoting a new revision. They set July 1, 2001, as a uniform effective date, to give all the jurisdictions time to enact the new revision. A recent check of the official website showed adoption in 31 states, including California, plus the District of Columbia, and introduction of legislation in the other 19 states (including New York and Florida). (www.nccusl.org/nccusl/uniformact_factsheets/uniformacts-fs-ucca9.asp).

1. New Forms: Any statement *filed* on or after July 1, 2001, should be on the "National UCC Financing Statement (Form UCC1) (Rev. 7/29/98)." The forms are very similar to forms widely in use before this form, except on the new forms there is no space for the debtor's signature. Companies that make loans (or finance leases) secured by personal property should also have in stock "National UCC Financing Statement Addendum (Form UCC1Ad) (Rev. 7/29/98)", "National UCC Financing Statement Amendment (Form UCC3) (Rev. 7/29/98)", and "National UCC Financing Statement Amendment Addendum (Form UCC3Ad) (Rev. 7/29/98)."

2. Debtor Does Not Sign the UCC-1: The debtor does not sign the new UCC-1 form. The secured party (the lender) can file a UCC-1 by being "authorized" by the debtor. Revised Art. 9 § 9-509. The debtor's signature on the Security Agreement is considered "authorization", without any further explicit authorization. (Revised Art. 9 § 9-509(b), Official Comment 4.) A third party who takes possession of the collateral other than in the ordinary course of business, and without permission of the secured party (lender), is considered to have authorized the filing of a financing statement, so an additional or amended financing statement can be filed against such a transferee without any explicit authorization. (Revised Art. 9 §§ 9-315, 9-509(c), Official Comment 4.)

The absence of the debtor's signature presents the following practical issues:

a. Collateral in Financing Statement Must Match Collateral in Security Agreement: The debtor's authorization only extends to the "collateral described in the security agreement." If a lender wants to add or change anything in the description in the Financing Statement, they will have to make such changes in the Security Agreement as well. Otherwise, any collateral described in the Financing Statement would not be "authorized".

b. Nonjudicial Remedy Against Fraudulent Bulk Transfers: Borrowers

sometimes attempt to subvert personal property security interests by moving inventory and equipment in favor of a newly formed or related entity. There are various judicial remedies, and with the new Revised Act there appears to be a nonjudicial remedy, as well. If you can identify the transferee and file a statement within four months of the transfer, then you can file a UCC-1 against the transferee, without any signature or explicit authorization. This would not apply to transfers in the ordinary course of business. (Revised Art. 9 §§ 9-315, 9-509(c), Official Comment 4.)

3. Place of Filing is Debtor's State of Incorporation: Under the current Article 9, the financing statement is filed in the state in which the collateral is located, or in the case of intangible property the state of the debtor's principal place of business. Under the Revised Article 9, the financing statement is filed in the state in which the debtor is incorporated, and the statement covers collateral located in any state. Other registered entities are treated like corporations, and you use the state in which the entity-formation documents were filed. Unregistered entities, such as partnerships, go by their principal place of business. Individuals go by their principal residence. Here are some examples:

<u>Entity:</u>	<u>Place of Filing:</u>
California corporation, with principal office in L.A.	California
California corporation, with principal office in Nevada	California
Delaware corporation, with principal office in L.A.	Delaware
Foreign corporation, with principal office in L.A.	District of Columbia
LLC or LLP	State where formation documents were filed
Mr. A and Mr. B dba AB Clothing (partnership)	State where principal place of business is
Mr. A dba A's Clothing (sole proprietorship)	State where Mr. A has principal residence
Mr. and Mrs. A	State where Mr. and Mrs. A have principal residence

a. Out-of-State Collateral May Require Double Filing: If the debtor has collateral located in a state that has not adopted the Revised Article 9, it would be advisable to file in the state in which the collateral is located, as well as the state of the debtor's incorporation.

4. Amended Filing Required On Transfer of Collateral, Name Change, or Change of Place of Incorporation: If the debtor changes its name, or its place of incorporation (this rarely happens), then an amended financing statement reflecting the change is due within four months of the change. Similarly, if the collateral is transferred to another entity, that entity becomes an additional debtor and an amended financing statement is required within four months of the transfer.

5. Existing Financing Statements Are Still Valid: Financing statements filed prior to July 1, 2001 in the place and manner required by the current version of Article 9, will continue to be valid after July 1, 2001. Such statements remain valid for five years from filing, which is the same as current law. A continuation (on Form UCC-3) of such statements must be filed in accordance with the new requirements. For example, if a California lender filed a UCC-1 against a Delaware corporation with its business and assets in California in California in October of 1997, then the current financing statement will still be valid, but if the lender needs to continue the encumbrance a continuation will be required by October of 2002, and it will be filed in Delaware.

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