



Amendments to Article 9 of UCC Impose New Requirements for UCC Financing Statements

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A law recently signed by the Governor (P.L. 2015, c.59) established new requirements for the effectiveness of Uniform Commercial Code (“UCC”) financing statements filed within the New Jersey Treasury Department. The changes were contained within broader legislation which was intended to address concerns raised by the filing of fraudulent financing statements. These fraudulent filings can cause serious financial consequences to their victims as they damage credit scores and may cause difficulties in selling or purchasing real estate. Public officials were particular targets of these fraudulent filings.

Effective May 11, 2015, the new legislation, among other things, increases civil penalties for fraudulent filings and also establishes that a person commits a crime of the second degree if he files in any filing office, any document against the real or personal property of a current or former state or federal public servant or such public servant's family, on account of the performance or non-performance of that public servant's official duties, knowing or having reason to know such document is false or contains materially false, fictitious or fraudulent statements or representations; or is filed with the intent to harass, hinder, defraud, retaliate against or in any way impede the performance of that public servant's duties.

The legislation contains provisions of particular concern to secured creditors. Under the new law, in order for a UCC-1 financing statement to be “sufficient”, it must indicate that the collateral described is within the scope of Article 9 of the New Jersey UCC pursuant to N.J.S.A. 12A:9-102 and N.J.S.A. 12A:9-109. **A statement to this effect must presumably be expressly contained within the financing statement.** Also, the name of the secured party on the UCC-1 financing statement must “disclose the identity of the secured party or [its] representative.” This latter new requirement should not be a major concern as most secured parties file under

their actual legal name. To avoid any doubt, use of the secured creditor's exact legal name is advisable. If either of these two new requirements is not met, it may well be that the UCC-1 financing statement, even if accepted for filing, will be ineffective.

Further, the new legislation provides that the filing of a UCC financing statement does not occur if the filing office refuses to accept the filing because of various circumstances including: the collateral described is not within the scope of Article 9; the filing office reasonably believes the filer is attempting to file under a fictitious name with intent to harass or defraud the person identified as the debtor; the filing office reasonably believes the record is materially false or fraudulent because, among other things, it asserts a claim against a current or former employee of a governmental unit relating to the performance or non-performance of that person's duties and for which the filer does not hold a properly executed security agreement or judgment; the filing indicates the debtor and the secured party are the same; the filing indicates that an individual is a transmitting utility; or the filer is incarcerated.

The above provisions regarding the ability of a filing office to refuse to accept a filing do not apply if the financing statement is submitted by a "registered organization" as defined in Article 9 of the UCC. A registered organization is any entity created under the laws of any state or federal government. Accordingly, for the most part, all New Jersey and federally chartered financial institutions will be exempted from this latter provision.

For more information about the new law, please contact Mark S. Rattner at mrattner@riker.com or (973) 451-8493.

Attorney:

Mark S. Rattner

Practice:

Financial Services