

Notice Filing in the United States under Article 9 of the Uniform Commercial Code

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Article 9 of the Uniform Commercial Code deals with secured transactions in personal property. It was promulgated in the early 1950's, was widely enacted during the 1960's, and for many years has been the law of all 50 states of the United States and several territories. Most provinces of Canada also have adopted personal property security acts patterned substantially on Article 9. Article 9 was recently revised. Revised Article 9 has been enacted in 30 states and will become effective in all but one of those states on July 1, 2001. This brief paper focuses on the structure and role of the Article 9 filing system.

Article 9 contains many defined terms. A debtor creates a security interest by authenticating a security agreement. The person receiving the security interest is the secured party. The property to which the security interest attaches is the collateral.

All versions of Article 9 have incorporated what has become known as a notice filing system (although notice filing is not a term used in Article 9 itself). Under this system, security interests in most types of personal property may be perfected by filing a financing statement in a public filing office (e.g., the office of the Secretary of State of a state). The chief effect of perfecting a security interest in collateral is priority over the interest of a judicial lien creditor and, consequently, priority over the debtor's trustee in bankruptcy should a filing be made by or against the debtor under the United States Bankruptcy Code. Perfection also may (but does not always) afford priority as to certain

other claimants, including some buyers, holders of competing security interests, and holders of statutory liens. In lieu of filing a financing statement, perfection of a security interest in some types of collateral (e.g., instruments and goods) also may be achieved by the secured party taking possession of the collateral. As to certain other types of collateral (e.g., deposit accounts and money), filing is not a permissible method of perfection.

Under Revised Article 9's medium-neutral provisions, a financing statement need not be in writing or signed by the debtor. For example, it may be an electronic record, thus facilitating electronic filing. However, to be effective a financing statement must be authorized by the debtor.

Revised Article 9 requires an effective financing statement to include certain mandatory information: (i) the name of the debtor, (ii) the name of the secured party or the secured party's representative, and (iii) an indication of the collateral covered by the financing statement. The name of the debtor is important because financing statements are indexed according to the debtor's name. An interested person may request a search of the filing office records in order to discover financing statements filed against a particular debtor's name. Under Revised Article 9, if a financing statement is filed against an incorrect name, but a search of the records under the correct name would discover the financing statement, the financing statement is deemed satisfactory.

The indication of collateral on a financing statement also is very important. A financing statement will perfect a security interest only in collateral that is properly indicated. The indication might specifically describe the collateral, such as one 1999 X Corp., model ABC, tractor, serial no. 12345. Or it might be a broader description, such as all inventory and equipment now owned or hereafter acquired by the debtor. These descriptions also would suffice for purposes of a security agreement. But a financing statement may, instead, include only a much broader indication, such as all personal property. In a notice filing system, the purpose of the public record is to alert an interested person that a secured party may claim a security interest in the indicated collateral. More investigation may be necessary by that person.

The date that a financing statement is filed determines not only the time of perfection but also priorities among secured parties that claim security interests in the same collateral. This follows from Article 9's first-to-file-or-perfect priority rule. Consider a simple example. SP-A filed a financing statement against D on 15 June. On 15 July SP-B filed a financing statement against D covering the same collateral, D authenticated a security agreement describing the collateral, and SP-B loaned \$10,000 to D to be secured by the collateral. On 15 August, SP-A loaned \$10,000 to D and D authenticated a security agreement covering the collateral to secure the loan. Whose security interest is senior? SP-B's security interest was the first to be perfected--on 15 June SP-A had not even made a loan and held no security interest at all. But, because SP-A was the first to file (although not the first to perfect), SP-A's security interest is senior under the first-to-file-or-perfect priority rule. How did SP-B go wrong? It should have conducted a search, discovered SP-A's financing statement, and refused to make the loan until SP-A (i) terminated its financing statement (which D

could require SP-A to do because no loan was outstanding) or (ii) contractually subordinated its security interest. Once SP-A ascertained that it was the first to file, it generally did not need to worry about subsequent, intervening parties.

In a federal system like that of the United States, one must know in which state to file a financing statement or search for financing statements filed against a given debtor--i.e., which state's law governs perfection. Under Revised Article 9, for most types of collateral the law governing perfection is the law of the state in which the debtor is located. An entity such as a corporation is located in its state of incorporation. For example, if the debtor is a California corporation, it is located in California. Financing statements must be filed, and searches conducted, in the appropriate filing office in California. However, for tangible collateral such as goods, priority, as opposed to perfection, continues to be governed by the state in which the collateral is located. A choice-of-law rule for perfection and priority is important even in a law governing secured transactions on a national level. One must know when a court sitting in one country will apply its own domestic laws for perfection and priority and when it would apply the laws in another country.

I am pleased to note that many aspects of the Article 9 notice filing system have been incorporated in the Draft Law on Security Interests in Personal Property prepared by CEAL.