

News

UCC Article 9 Amendments Enacted in 26 States

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For Immediate Release:

Twenty-six states have enacted the 2010 Amendments to Article 9 of the UCC

May 22, 2012 – Important new amendments to Article 9 of the Uniform Commercial Code (UCC) have now been enacted in 26 states – 17 new this year. The 2010 Amendments are designed to go into effect simultaneously on July 1, 2013. More states are expected to enact the amendments this year, while the remaining states are expected to enact the amendments in 2013.

UCC Article 9 governs secured transactions in personal property (the granting of credit secured by personal property). Hundreds of millions of dollars of commercial and consumer credit are granted every year in secured transactions under UCC Article 9. The UCC9 rules apply, for example, when a manufacturer finances the acquisition of machinery, a retailer finances inventory, or a consumer finances home furnishings.

UCC9 provides rules that govern any transaction, other than a finance lease, that involves the granting of credit coupled with a creditor's interest in a debtor's personal property. If the debtor defaults, the creditor may possess and sell the property to satisfy the debt. The creditor's interest is called a security interest. Perfection of the creditor's security interest establishes the creditor's priority over other creditors. UCC9 specifies who has the first rights in the collateral when two or more competing creditors have legally enforceable interests in the collateral.

UCC9 was substantially revised in 1998 and adopted in all states. The 2010 Amendments to UCC9 modify the existing statute to respond to filing issues and address other matters that have arisen in practice following a decade of experience with the 1998 version of UCC9.

Of most importance, the 2010 Amendments provide greater guidance as to the name of an individual debtor to be provided on a financing statement. The amendments offer two alternatives to each state:

- Alternative A provides that, if the debtor holds a driver's license issued by the state where the financing statement is filed, the debtor's name as it appears on the driver's license is the name required to be used on the financing statement. If the debtor does not

have such a driver's license, either the debtor's actual name or the debtor's surname and first personal name may be used on the financing statement.

- Alternative B provides that the debtor's driver's license name, the debtor's actual name or the debtor's surname and first personal name may be used on the financing statement.

The amendments further improve the filing system for the filing of financing statements. More detailed guidance is provided for the debtor's name on a financing statement when the debtor is a corporation, limited liability company or limited partnership or when the collateral is held in a statutory or common law trust or in a decedent's estate. Some extraneous information currently provided on financing statements will no longer be required.

In addition, the amendments provide greater protection for an existing secured party having a security interest in after-acquired property when its debtor relocates to another state or merges with another entity.

To date, the 2010 Amendments to UCC Article 9 have been enacted in: Colorado, Connecticut, Florida, Hawaii, Idaho, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Minnesota, Nebraska, Nevada, North Dakota, Ohio, Oregon, Puerto Rico, Rhode Island, South Dakota, Tennessee, Texas, Virginia, Washington, West Virginia, and Wisconsin. The UCC9 Amendments were introduced this year in: Alabama, District of Columbia, Illinois, Louisiana, Massachusetts, New Hampshire, New Mexico, Oklahoma, and Pennsylvania.

The amendments to UCC Article 9 were drafted and approved by both the Uniform Law Commission and the American Law Institute in 2010. Further information on UCC Article 9 can be found at the ULC's website at www.uniformlaws.org.

The Uniform Law Commission, now in its 120th year, comprises more than 350 practicing lawyers, governmental lawyers, judges, law professors, and lawyer-legislators from every state, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands. Uniform law commissioners are appointed by their states to draft and promote enactment of uniform laws that are designed to solve problems common to all the states.

After receiving the ULC's seal of approval, a uniform act is officially promulgated for consideration by the states, and legislatures are urged to adopt it. Since its inception in 1892, the ULC has been responsible for more than 200 acts, among them such bulwarks of state statutory law as the Uniform Commercial Code, the Uniform Probate Code, the Uniform Partnership Act, and the Uniform Anatomical Gift Act.



Changes to UCC Article 9 Effective July 1, 2013

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Uniform Commercial Code (UCC) Article 9 deals with all transactions (other than a finance lease) that maintain the creditor's interest in a debtor's personal property. The debtor can be an individual or any business entity, ranging from a registered corporation to a single proprietorship.

The last major revision of Article 9 occurred in 1998. It went into effect on July 1, 2001 and has been adopted in all fifty states. To learn more about that revision, read our 2007 article, [Secured Transactions and UCC 9](#).

A decade later, a Review Committee was appointed by the [American Law Institute \(ALI\)](#) and the [Uniform Law Commission \(ULC\)](#) to review the practical application of Article 9. In 2010, this Committee suggested several amendments related to filing issues and other matters that had arisen since the 2001 revision went into effect. This was not intended as a major overhaul of the Article, but rather as recommendations for changes to sections that appeared to be creating significant problems in practice. The ULC recommended the July 1, 2013 nationwide effective date, along with a five-year transition period.

UCC Article 9 2001 vs. 2013 Some key provisions of the Article that have been revised in the 2013 version:

1. **UCC §9-102(a)(68)**. -- Considered by many to be the most important amendment, the purpose of this revision is to provide increased certainty that the debtor name on the financing statement is the correct name for purposes of UCC 9.

2001 Version: States that the name on the "public record" is the correct name of the registered organization in a financing statement.

2013 Version: States that the correct name is now the name on the "public organic record", which is defined as any record available for public inspection, including those filed with or by the state to form an organization, e.g. articles of incorporation, articles of organization, limited partnership agreements.

2. **UCC §9-105** clarifies the rules pertaining to "control" of Electronic Chattel Paper (ECP) to give secured parties more leeway for developing reliable systems for keeping track of and controlling such documents.

2001 Version: Gives a six-factor test for determining whether a secured party has control of electronic chattel paper.

2013 Version: Retains the six-factor test and adds a general test requiring that the system employed to evidence the transfer of the ECP "reliably establish the secured party as the person to which the chattel paper was assigned".

3. **UCC §9-316:** Makes it more likely that a secured party will remain perfected if a borrower moves to another states or sells to (or merges with) a debtor in another state.

2001 Version: States that perfected security interests that attach prior to a debtor's move to another state remain perfected for four months after the move.

2013 Version: Adds a new subsection (h) that provides for continued perfection of the newly acquired security interests that attach within four months after the debtor moves, as long as the secured party has taken steps that would have perfected the security interest in the debtor's original state. The perfection extends until the end of the four-month period.

A new subsection (i) has also been added. It provides for automatic perfection of security interests that attach within four months after a new debtor in another state becomes bound by an existing security agreement with the original debtor. Again, this applies as long as the secured party has taken steps that would have perfected the security interest against the original debtor.

4. **UCC §9-503** -- As with §9-102(a)(68), this section determines the correct debtor name that should be included on the financing statement since minor variations in the names of organizations and individuals has made it difficult for secured parties to determine the proper name for a financing statement.

2013 Version: For registered organizations, the correct name is as listed in §9-102(a)(68). However, for individual debtors, there are two alternative provisions provided. State legislatures can select the alternative that best meets the needs of their constituents.

- **"Only If" Option:** If the debtor has a driver's license or other state identification that has not expired, the name on that document may be used for the financing statement. If the debtor does not have an unexpired state ID, the secured party may use the debtor's first personal name and surname.
 - **"Safe Harbor" Option:** The debtor's name is sufficient for the financing statement if it is (a) the debtor's individual name as determined by state law, (b) the debtor's surname and first personal name, or (c) the name on an unexpired driver's license or other state identification.
5. **UCC §9-516** revises the information required on the financing statement. The Uniform Law Commission determined that the burden of providing the information was not worth the benefit as it was relevant only to registered organizations and the states already had laws precluding the use of duplicate or deceptively similar names.

2001 Version: Required that the financing statement include the debtor's type of organization, jurisdiction and organizational ID number.

2013 Version: Eliminated the requirement for these three pieces of information.

There were also changes to three UCC forms:

National UCC Forms (UCC-1 and UCC-3)

New National Forms that incorporate the revisions to Article 9.

UCC-5 Correction Statement

2001 Version: A debtor may file a UCC-5 Correction Statement when it wishes to add a remark to the public record regarding the financing statement. The Correction Statement has no legal effect.

2013 Version: The Correction Statement is renamed an "Information Statement" and secured parties, as well as debtors, can now file them when they feel clarification is required. They continue to have no legal effect.

Conclusion

To date, 29 states have enacted the 2010 revisions to UCC Article 9, and 6 states plus the District of Columbia have introduced the legislation. The new version has also been endorsed by the American Bar Association.

States That Have Enacted Revised UCC Article 9

Colorado Connecticut Florida Hawaii Indiana Idaho Iowa Kansas Kentucky Louisiana Maryland Michigan Minnesota Nebraska Nevada New Hampshire North Carolina North Dakota Ohio Oregon Puerto Rico Rhode Island South Dakota Tennessee Texas Virginia Washington West Virginia Wisconsin

States that Have Introduced Revised UCC Article 9

Alabama District of Columbia Illinois Massachusetts New Mexico Oklahoma New Mexico Pennsylvania

To view the Revised UCC Article 9 visit: [Amendments to Uniform Commercial Code Article 9.](#)