

Understanding UCC Financing Statements with Extended Effective Periods

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Under Article 9 of the Uniform Commercial Code (“UCC”), financing statements are generally effective for five years from the date of filing. There are some narrow exceptions to this rule that can extend the effectiveness out to thirty years or beyond. If an exception applies, the secured party’s job becomes much simpler. It does not need to file continuation statements every five years and expiration date tracking is much easier.

Extended effective periods are available only when two conditions are satisfied. First, the financing statement must represent one of the three transaction types designated in UCC § 9-515. The second condition is that the financing statement must indicate it was filed in connection with one of those three transaction types.

While the requirements appear simple enough, in practice there are traps for the unwary secured party. Filing office practices, form limitations and non-uniform state laws can limit a secured party’s ability to obtain an extended effective period. The secured party must exercise proper diligence to qualify for the extended effectiveness, if it is even available under state law.

UCC § 9-515

The rules for duration and effectiveness of a financing statement are found in UCC § 9-515. In general, a UCC financing statement is effective for five years from the date of filing. Unless an exception applies, the five-year period applies to both financing statements filed in the state central UCC index and those recorded as fixture filings in county real estate records.

The only exceptions are found in UCC § 9-515(b) and (f). Under § 9-515(b), if a financing statement indicates that it is filed in connection with a public finance or manufactured-home transaction, it is effective for thirty years from the date of filing. The reason for the longer effective period is that these transactions frequently involve financing over a much longer term than the typical secured transaction.

The other exception occurs when the debtor falls within the definition of “transmitting utility” found in § 9-102(a)(80). The definition is very broad and includes not just companies that transmit electrical power or radio signals, but may cover those engaged in a variety of other activities. If the financing statement indicates that the debtor is a transmitting utility, then § 9-515(f) provides that the record does not lapse. It is effective until terminated.

The Indication Requirement

The indication required by § 9-515 is very important. Without this indication, a financing statement is only effective for five years, even if the transaction otherwise qualifies for an extended effective period.

Just how does a secured party “indicate” that the financing statement covers one of the three relevant transactions? The UCC is silent on what constitutes a sufficient indication. Simply inserting a statement into the collateral or other text field on the form may not satisfy the indication requirement. The reason is that the filing offices are unlikely to identify an indication made in this manner.

Article 9 largely removed filing office discretion about how to determine what information on a financing statement should be transcribed into the UCC index. The filing office does not review the collateral statement or other parts of UCC forms to identify the filer’s intent. Instead, the filing offices simply index the text or check marks found in specific fields. Under this system, the filing offices would almost certainly overlook any indication made in one of the text fields.

The National UCC forms were designed to provide a field for the secured party to clearly make the § 9-515 indication. That allows the filing office to objectively determine whether to assign an extended effective period based on whether the filer checked a certain box.

The check boxes for this purpose are found in Section 18 of the addendum form (“Form UCC1ad”). Section 18 contains three check boxes the filer can use to indicate that the debtor is a transmitting utility, or that the financing statement is filed in connection with a public finance or manufactured home transaction. An indication made anywhere other than Section 18 is likely to be ineffective, as the filing office will not recognize it.

The National UCC forms have limitations when it comes to making the indications required by § 9-515. The only form that contains the check box indicators is the financing statement addendum. If the filer omits the addendum, the financing statement will always expire in five years.

The secured party cannot later amend the financing statement to qualify for extended effectiveness. The amendment form has no field to make the § 9-515 indications. The only sure method for a secured party to obtain an extended effective period is to attach an addendum to the financing statement with the required indication box checked in Section 18.

For transmitting utility filings, an indication in Section 18 may not be enough to obtain the longer effective period. Some filing offices now require the secured party to provide evidence that the debtor falls within the Article 9 definition of “transmitting utility.” The reason is that a small group of people have been abusing the UCC process by filing bogus liens.

Bogus filers use the UCC process to file liens with the intent to harass or defraud. Often, the targets are public figures. In some cases the bogus filers even file UCC records on themselves as part of a fraudulent scheme to draw funds on the U.S. Treasury. These people commonly check the “transmitting utility” box in Section 18 of the addendum form to ensure the financing statement remains on the record indefinitely. Bogus transmitting utility filings are so common that in some states they outnumber legitimate filings by three to one.

A few states are fighting back. Three states, Illinois, New Mexico and West Virginia now require the secured party to provide proof that the debtor is in fact a transmitting utility if that box is checked. The secured party should be ready to provide supporting evidence of the debtor’s status when submitting a transmitting utility filing in these states.

Non-Uniform Versions of § 9-515

While all the states uniformly enacted the general five-year effective period for financing statements, several enacted non-uniform versions of § 9-515(b) and (f). Sixteen states have some departure from the official text of § 9-515. The secured party may not be able to receive extended effectiveness in these states, even if the financing statement provides the required indication in Section 18.

Ten states omitted the public finance transactions exception from § 9-515(b), but retained

the thirty-year effectiveness for manufactured-home transactions. Three states did just the opposite and omitted just the portion of § 9-515(b) that applies to manufactured-homes. Two states omitted § 9-515(b) entirely.

Georgia not only omitted § 9-515(b) when it enacted Revised Article 9, it also dropped § 9-515(f) for transmitting utilities. Every financing statement filed in Georgia is effective for only five years, regardless of whether the secured party checked one of the boxes in Section 18.

One the other hand, West Virginia law provides an even longer effective period for financing statements filed in connection with manufactured-home and public finance transactions. Under West Virginia’s version of § 9-515(b), these financing statements are effective for forty years.

The non-uniform variations to § 9-515 can create confusion for both secured parties and filing offices. If the secured party relies on the official text of UCC Article 9, rather than the statute as enacted in a particular state, it may set the incorrect lapse date in its tracking system.

At least one filing office ran into problems when the state enacted a non-uniform version of § 9-515. Washington was one of the states that omitted § 9-515(b) entirely from its statute. With the exception of transmitting utilities, all financing statements filed in Washington are effective for five years. However, the

Department of Licensing based its UCC administrative rules on the official text of Article 9, including § 9-515(b). Consequently, the UCC filing office incorrectly set the lapse dates for both public finance and manufactured housing transactions at thirty years from the date of filing.

This practice went on for several years before the filing office realized its error. By then, it was too late for some secured parties. A number of the affected financing statements lapsed because the secured parties relied on the expiration dates assigned by the filing office. The Department of Licensing recently amended its rules to correct the oversight.

Conclusion

A secured party can take measures to avoid problems with the extended effectiveness provisions of § 9-515. The most important is for the secured party to understand that extended effectiveness is not always available. The secured party should always verify that the version of § 9-515 enacted in the filing state permits an extended effective period for financing statements related to the particular transaction. If state law allows for an extended effective period, the secured party must then properly provide the required indication on the financing statement. That requires use of the addendum form with the correct box checked in Section 18. By following these simple practices, the secured party can correctly track expiration dates and avoid having financing

statements prematurely lapse.

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