

## **UCC Filings in the District of Columbia Under Revised Article 9**

Article 9 of the Uniform Commercial Code (the "UCC"), which governs secured transactions in personal property, has been revised in the first substantial changes to the UCC since 1972. Revised Article 9 ("RA 9") represents a major overhaul of Article 9, including revisions to the scope of collateral, the enforcement of security interests, the manner of filing office processing, and the facilitation of electronic commerce. It is effective in the District of Columbia as of July 1, 2001.

### **Where to File**

Most UCC financing statements are filed centrally at the location of the debtor, which, under RA 9, depends entirely on the entity type of the debtor. When the debtor is a corporation, limited partnership, or a limited liability company (termed "registered organizations" by RA 9), the location of the debtor is the state where the organization was registered and organized. Individuals, on the other hand, are deemed located at the individual's principal legal residence.

If the debtor's location is the District of Columbia, a secured party has the option of making a paper filing or filing electronically. Although RA 9 is "medium neutral" as to the manner of filing, electronic filing is encouraged in D.C. To file electronically, a filer may register with the Office of the Chief Financial Officer at <http://cfo.dc.gov/services/tax/ucc/index.shtm>. Using a "User ID" and password established at registration, one may file an initial financing statement or an amendment (a continuation, assignment, or termination) and pay by credit card. Paper versions of financing statements must be filed with the Recorder of Deeds, located at 515 D Street, NW, Washington, D.C., 20002.

### **What to File**

RA 9 recognizes two standard, national forms used to file financing statements: Financing Statement Form UCC-1 for original filings and Form UCC-3 for amendments. Both of these forms are widely available.

Certain requirements of the UCC-1 have changed under RA 9. First, the collateral description in the UCC-1 can be supergeneric - stated as "all personal property" or "all assets" of the debtor. Also, the debtor need not sign the financing statement. The debtor must, however, authorize the filing of a financing statement. Conveniently, a debtor's execution of the security agreement automatically authorizes the filing of a conforming financing statement. The filing office does not require proof of authentication.

Importantly, it is up to the secured party to record the debtor's name on the financing statement. It must be the exact full legal name, unabbreviated. Give the full legal name, which, in the case of individual debtor, should not include prefixes, such as Mr., Mrs., or Ms. If the debtor is a registered organization, the filer should list the exact registered name shown on the currently filed charter documents registered with the Secretary of State's Office of the home state or jurisdiction. As a general matter, filers should avoid using trade names or a/k/a, in place of, or in combination with, the debtor's exact full legal name.

A financing statement that fails sufficiently to provide the debtor's name is seriously misleading as a matter of law. However, if the financing statement contains a name error and the debtor's correct name would be disclosed in a search under the correct name using the standard search procedure (or electronic search engine) of the filing office, then the incorrect name does not make the financing statement seriously misleading. Otherwise, the financing statement will be ineffective. The financing statement must give the name of the secured party (or a representative). A mailing address must be included, or the filing office may reject the statement.

### **The Mechanics of Revised Article 9**

RA 9 changes the statutory definitions of some of the important collateral categories. The "accounts" category is greatly expanded, "general intangible" is correspondingly shrunk, and "chattel paper" now embraces electronic as well as written interests.

The expansion of the accounts category drains many rights to payment out of the general intangible class. For example, rights to payment arising for real estate, licenses, chattel paper or promissory notes are now accounts under RA 9. The "general intangible" class now includes only certain types of payment rights, such as payment rights that arise out of loan agreements that do not constitute instruments. If, however, the debtor's principal obligation under a general intangible is the payment of money, RA 9 terms that intangible a "payment intangible," and brings it within the scope of RA 9.

The sale of a promissory note will also often function as a financing transaction. RA 9 recognizes this fact and treats the sale of a promissory note as a transaction subject to its purview. RA 9 defines a "promissory note" as an "instrument." As with the buyer of a payment intangible, the buyer of a promissory note enjoys automatic perfection of its security interest.

The current rules for the creation and attachment of the security interest remain substantially the same under revised Article 9. Attachment continues to require a security agreement, value and that the debtor have rights in the collateral.

### **Supporting Obligations**

RA 9 also collects into a new concept several kinds of rights, such as guaranties and underlying collateral, that are understood under prior law to follow the debt, and terms these rights "supporting obligations." Under RA 9, the creation of a security interest in a payment obligation automatically attaches to "supporting obligations" related to the obligation, and the perfection of a security interest in the supported obligation automatically perfects the security interest in the supporting obligation.

### **Attachment and Perfection of a Security Interest**

RA 9 provides for automatic perfection of a security interest in several circumstances, including the sale of payment intangibles, promissory notes, and supporting obligations. Furthermore, under RA 9, a secured party can use the filing of a financing statement to perfect its security

interest in instruments and investment property (including stock certificates), where a secured party could formerly perfect only by possession. It should be noted that the availability of perfection by filing does not preclude perfection by other available means, such as possession or control.

Under RA 9, if a creditor takes a security agreement covering a note or takes possession of a note in a pledge transaction, it automatically gains a security interest in the mortgage. Therefore, perfection of the interest in the right to payment also perfects the security interest in the mortgage. Similarly, any personal property security interest securing the note is also accessory to the note. Thus, it is possible to have a security interest in a security interest.

To illustrate this principle, consider the following scenario. D.C. Lender makes \$100,000 in advances to Washington Store secured by a perfected floating lien security interest in the entire inventory of Washington Store, evidenced by a promissory note. D.C. Lender delivers the promissory note to Columbia Bank as collateral for a \$1 million loan by Columbia Bank to D.C. Lender. The physical pledge of the note perfects Columbia Bank's interest in the note under RA 9, and Columbia Bank also gains a perfected security interest in D.C. Lender's security interest in the inventory of Washington Store. Therefore, if Washington Store defaults on its obligations to D.C. Lender, Columbia Bank can proceed against the inventory to the extent of Washington Store's obligations with respect to the \$100,000 in advances.

### **Priority**

Generally, RA 9 continues the long-standing rule that the first secured party to file a financing statement or to perfect its security interest has priority over other secured parties. A secured party with a security interest in investment property, a letter of credit right, and electronic chattel paper may perfect its security interest by filing or control. A secured party that perfects a security interest in investment property or a letter of credit right only by filing will not have priority against a secured party that later perfects by control, even if the second secured party knows of the prior perfected security interest. Therefore, a secured party that does not fear a debtor double-financing collateral can rely on a simple filing of a financing statement to perfect the security interest and defeat a lien creditor, including a trustee in bankruptcy and debtor in possession.

Similarly, the new right to perfect a security interest in an instrument by the filing of a financing statement does not protect the secured party that perfects by filing against a subsequent secured party that perfects by taking possession of the instrument, unless the second secured party knows that its purchase violates the rights of the first secured party.

### **Enforcement**

RA 9 also resolves a few of the disputes that have arisen in litigation. During foreclosure, each "aspect" of a foreclosure sale must be "commercially reasonable." A low price alone, however, will not make a foreclosure sale commercially unreasonable under RA 9. Rather, a low price obtained at the foreclosure sale "suggests that the court should scrutinize carefully all aspects of a disposition." Furthermore, under RA 9, a secured party must give enforcement notices to other secured parties, as well as the debtor.

## **Transition Rules**

Earlier transactions outside of old Article 9 that are now subject to RA 9 remain effective. For example, a security interest in a commercial tort claim effective under UCC law prior to the effective date of RA 9 remains effective and secured party may enforce the security interest under either non-Article 9 law or under RA 9.

A security interest perfected under old Article 9 remains perfected if the secured party perfected the security interest under prior law, either under old Article 9 or through another Article, and the acts of perfection would also perfect the security interest under RA 9. A security interest perfected under old Article 9, however, remains perfected for only one year under RA 9 if the secured party perfected the security interest under old Article 9 or by another Article, and those perfection steps do not suffice to perfect the security interest under RA 9. The security interest will remain enforceable after one year if the secured party takes any necessary additional steps for attachment under RA 9 within one year after RA 9 takes effect. This corrective action usually will only require a description of collateral that suffices under RA 9 or and a filing in the correct state under the new Article 9.

This one-year period of grace will apply when RA 9 changes the requirements for attachment of the security interest. For example, if the creditor's security agreement covers "all consumer goods" then the creditor will have one year from the effectiveness of RA 9 to obtain a more specific description. This period of grace will also clearly apply when RA 9 changes the method of perfection. For example, if the secured creditor has relied on notification to a bailee in possession of collateral to perfect its interest under old Section 9-305, then the creditor will have one year from the effective date of RA 9 to get an attornment from the bailee as required by RA 9.

The filing of an effective financing statement under prior Article 9 remains effective under RA 9 until the earlier of the normal lapse date of the financing statement (generally five years after filing of financing statement), and five years after the effective date of RA 9. A secured party may file a "continuation statement" under RA 9 to continue a financing statement filed under prior Article 9 only if the continuation statement is filed in the state where the financing statement was filed under prior law, and that state is the correct state for the filing of a new financing statement under RA 9.

## **Searching**

When searching for financing statements until July 1, 2006, it may be necessary to search not only in the filing office applicable under RA 9, but also, where different, in the jurisdictions and filing offices under former Article 9.