

UCC News & Announcements

On July 1, 2013 the 2010 Amendments to UCC Article 9 go into effect. The 2010 Amendments to Article 9 represent the first significant change to the official text since 1998. Most of the 2010 Amendments merely clarify existing law, however, some of the changes impact the UCC search and filing process and related due diligence.

Searchers:

Nothing changes to the UCC search logic or the functionality of the online searches. Because of changes in the filing requirements (see below) you may want to change your own search habits.

Filers:

- **Debtor name changes** - the requirements for the debtor name change under the new law. IC 26-1-9.1-503
- **Debtor is an Organization:** IC 23-1-9.1-503(a)(1)

The name on the financing statement must be the registered organization's name as it appears on the public organic record.

An organization's name is established through the public organic record of the entity. Therefore, the actual name of the entity is found on the latest change in name in the entity formation/amending documents. For example, the articles of incorporation, articles of amendment changing the name, articles of merger or the latest restated articles of incorporation or organization.

Indiana's business entity database is **not** the public organic record. Indiana's business entity database may have abbreviations, omissions and other errors in organization names. Many of these deviations were intentional based on past indexing practices. A filer will need to review the images of the business entity in order to determine the organization's name. The images are available online.

- **Debtor is an Individual:** IC 23-1-9.1-503(a)(4)

If an individual has an **Indiana** issued driver's license that is not expired, the name on the financing statement should appear exactly as it appears on the driver's license.

If an individual has an **Indiana** issued identification card that is not expired, the name on the financing statement should appear exactly as it appears on the identification card.

If an individual has neither form of Indiana issued identification, the name on the financing statement should appear as the surname and first personal name of the debtor.

The Secretary of State will have no information regarding whether a name has been changed on a driver's license or personal identification card. It will be the filer's responsibility to determine if the information on the financing statement remains current.

- Correction Statement becomes an Information Statement - **both** a debtor and a secured party may now file a statement to correct the record if they believe a filing was made in error.

Forms:

- The UCC forms have had changes to the names of the fields. These changes reflect a more international nomenclature. The following are changes to the Financing Statement Form:
 - Last Name is now Surname
 - First Name is now First Personal Name
 - Middle Name is now Additional Names(s)/Initial(s)
 - Licensee/Licensor has been added as an Alternative Designation
 - Designating that the collateral is Held in Trust added
 - Debtor organization information – the type, jurisdiction and identification number of the organization are no longer required
 - Search to reflect has been removed from the form

Transition:

The Business Services Division will accept the new forms beginning July 1, 2013. It will continue to accept the pre-2010 version of the model UCC forms until **July 31, 2013**. The UCC eFiling system will be updated on or before July 2, 2013 and will conform to the new statutes.

Rejection of Fraudulent Financing Statements

In response to the abuses of the UCC filing process, the Indiana legislature added non-uniform sections 901 and 902 to Indiana’s Article 9. These changes were effective April 24, 2013. The new provisions allow the Indiana Secretary of State to reject financing statements for the following reasons:

- The filing office determines that the financing statement is not required or authorized to be filed or recorded with the Secretary of State **or** the filing office has reasonable cause to believe the document is materially false or fraudulent.
- Fraudulent financing statements include statements (1) in which debtor and secured party are the same name, (2) in which an individual debtor is designated as a transmitting utility, (3) that appear to be submitted for an improper purpose or are forged, or (4) submitted without consent.

Under the new law a person may file a motion for judicial review if they believe a financing statement is fraudulent. The court may award fees and costs, declare the financing statement ineffective and may order the filing office to terminate or purge the financing statement.

Administrative Rules

The Indiana Administrative will be revised to conform to the new requirements.

Corporation Service Company has created a comprehensive FAQ document that can be accessed at: http://www.csctransactionwatch.com/wp-content/uploads/2012/09/2010_Amendment_Summary_18092012.pdf