

WHAT THE CANADIAN FINANCE LAWYER NEEDS TO KNOW ABOUT THE NEW AMENDMENTS TO ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE

Smarter Way to Cross Blog Archives
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Many Canadian finance lawyers understand some of the basics of Article 9 of the Uniform Commercial Code relating to secured transactions (the UCC), even if they bring in U.S. counsel to handle the U.S. aspects of a cross-border lending transaction. In 2001, when the UCC was very dramatically revised, some Canadian finance lawyers attended presentations and seminars to become familiar with the key amendments, particularly the choice of law and filing rules. Email blasts are now warning of the proposed amendments to the UCC, with a target effective date of July 1, 2013. Do Canadian finance lawyers need to start the learning process all over again, or are these blasts much hoopla for nothing?

Most of the changes that will be brought about by the amendments are not of great significance in commercial transactions. It really is not necessary for most commercial lawyers, U.S. or Canadian, to internalize the details of the amendments. But there are a few practical “takeaways” that are worth noting.

- A red flag should be raised whenever the debtor is an individual, a trust, or decedent’s estate. U.S. counsel should be checking the relevant provisions of the UCC in the applicable state before filing and searching against an individual, trust, or decedent’s estate. If a client has any existing UCC filing against an individual, trust, or decedent’s estate, a UCC amendment or a new financing statement in lieu of continuation may need to be filed before the earlier of expiration of the existing financing statement or June 30, 2018, to bring the filing into conformity with the requirements of the amendments.
- Relying exclusively on a good standing certificate, certificate of status, or an online database to determine the proper name of a debtor that is a registered organization for UCC purposes has never been best practice. However, now it is very clear that it is the filed formation document or “public organic record” (as amended) that is controlling under the UCC and not some other public record that should be relied on to determine the debtor’s name for filing and search purposes.
- The amendments are a good reminder that certain changes after filing, such as a change in the debtor’s “location” for UCC purposes (generally, the debtor’s place of organization for a U.S. registered organization, residence for an individual, and chief executive office for certain other debtors) or the merger of a debtor with another entity, may require the secured party to file a new financing statement. The amendments actually expand the scope of certain limited grace periods for taking any required action.
- There is a new UCC financing statement form that should be used after the effective date of the amendments in any state that adopts the amendments. The principal changes in the form are to delete the boxes for the debtor’s type of organization, jurisdiction of organization, and organizational identification number.

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- For the lists of those states where the amendments have been adopted or introduced, see [the Uniform Law Commission's website](#). The amendments have not yet been introduced in the New York State legislature.