

PROPOSED REGULATION OF THE SECRETARY OF STATE

LCB File No. R084-01

August 13, 2001

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§1-42, NRS 104.9526.

Section 1. Chapter 104 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 42, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 42, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 12, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Amendment” means a UCC document that purports to amend the information contained in a financing statement. The term includes, without limitation, an assignment, a continuation and a termination.*

Sec. 4. *“Assignment” means an amendment that purports to assign all or part of the power of a secured party to authorize an amendment to a financing statement.*

Sec. 5. *“Correction statement” means a UCC document that purports to indicate that a financing statement is inaccurate or wrongfully filed.*

Sec. 6. *“Filing officer” means the secretary of state.*

Sec. 7. *“Individual” means a natural person, or the decedent if the debtor is the estate of the decedent.*

Sec. 8. *“Initial financing statement” means a UCC document which contains the information required to be included in an initial financing statement and which causes the filing officer to establish the initial record of the existence of a financing statement.*

Sec. 9. *“Organization” means a person other than an individual.*

Sec. 10. 1. *“Remitter” means a person who tenders a UCC document to the filing officer for filing, whether the person is a filer or an agent or representative of a filer who is responsible for tendering the document for filing.*

2. *The term does not include a person responsible merely for the delivery of a UCC document to the filing officer, including, without limitation, the United States Postal Service or a courier service.*

Sec. 11. *“UCC” means the Uniform Commercial Code as adopted in this state.*

Sec. 12. *“UCC document” means an initial financing statement, an amendment, an assignment, a continuation statement, a termination statement, a correction statement or an information request. The term is not limited to a written document, but includes a document transmitted electronically or through any other medium authorized by the filing officer.*

Sec. 13. 1. *A UCC document may be tendered for filing with the filing officer by:*

(a) *Delivery in person at the street address of the filing officer. The time of filing of a UCC document delivered by this method is the time at which delivery of the UCC document is accepted by the filing officer.*

(b) *Delivery by a courier at the street address of the filing officer. The time of filing of a UCC document delivered by this method is the earlier of the time the UCC document is first examined by the filing officer for processing or the close of business on the next business day*

following the time of delivery, regardless of whether the filing office is open for business at the time of delivery.

(c) Delivery by the United States Postal Service at the mailing address of the filing officer.

The time of filing of a UCC document delivered by this method is the close of business on the next business day following the time of delivery, regardless of whether the filing office is open for business at the time of delivery.

(d) Delivery by electronic mail at the e-mail address of the filing officer, or by electronic or telephonic transmission to a facsimile machine of the filing officer at the telephone number for the facsimile machine. The time of filing of a UCC document delivered by this method is the earlier of the time the UCC document is first examined by the filing officer for processing or the close of business on the next business day following the time of delivery, regardless of whether the filing office is open for business at the time of delivery.

2. A UCC document may be transmitted electronically using any technologies and protocols authorized by the filing officer.

Sec. 14. *Filing fees and other fees for services concerning public records may be paid by any of the following methods:*

1. Cash payments made in legal tender of the United States may be made in person to the cashier at the filing office.

2. A check payable in legal tender of the United States, including a check in an amount to be filled in by the filing officer but not to exceed a specified amount, will be accepted for payment by the filing officer if it is a cashier's check or a certified check drawn on a bank acceptable to the filing officer or if the drawer is acceptable to the filing officer. If a check

accepted by the filing officer as payment for a filing is returned for insufficient funds, the filing officer will so indicate on the filing and the filing shall be deemed void.

3. The filing officer will accept payment via an electronic funds transfer in accordance with the rules of the National Automated Clearing House Association from a remitter who has entered into an appropriate arrangement for such a transfer that has been approved by the National Automated Clearing House Association and who authorizes the relevant transfer pursuant to that arrangement and those rules.

4. A remitter may open a trust account for the prepayment of filing fees by submitting an application furnished by the filing officer. Filing fees may be prepaid in amounts of not less than \$100. The filing officer will issue an account number to be used by a remitter who wishes to pay filing fees in advance. The filing officer will deduct filing fees from the remitter's trust account when authorized to do so by the remitter. The remitter must provide to the filing officer written authorization to use the trust account to pay filing fees.

5. The filing officer will accept payment from a remitter using a credit or debit card issued by a card issuer approved by the filing officer. The remitter must provide the filing officer with the card number, the expiration date of the card, the name of the approved card issuer, the name of the individual to whom or the organization to which the card was issued and the billing address for the card. Such a payment is not tendered until the card issuer or its agent has confirmed to the filing officer that payment will be forthcoming.

Sec. 15. 1. *The filing officer will only accept a UCC document for filing that is on a form prescribed by the filing officer.*

2. The inclusion by a filer of names in an incorrect data-entry field on a form or the failure of a filer to transmit names accurately to the filing officer may cause the filing to be ineffective.

3. All documents submitted by a filer through direct data entry must use the designated name fields.

Sec. 16. *The duties and responsibilities of the filing officer with respect to the administration of the UCC are ministerial. The acceptance for filing of, or the refusal to file, a UCC document pursuant to sections 2 to 42, inclusive, of this regulation, does not:*

1. Constitute a determination concerning the legal sufficiency or insufficiency of the UCC document;

2. Constitute a determination that a security interest in collateral exists or does not exist;

3. Constitute a determination that information in the UCC document is correct or incorrect, in whole or in part; or

4. Create a presumption that information in the UCC document is correct or incorrect, in whole or in part.

Sec. 17. *1. The first day on which a continuation of a financing statement may be filed is:*

(a) The day of the sixth calendar month preceding the month in which the financing statement will otherwise lapse that corresponds to the day of the month on which the financing statement will otherwise lapse; or

(b) If there is no such corresponding day, the last day of the sixth calendar month preceding the month in which the financing statement will otherwise lapse.

2. The last day on which a continuation of a financing statement may be filed is the date on which the financing statement will otherwise lapse.

Sec. 18. *1. In addition to the grounds listed in NRS 104.9516 upon which the filing officer may refuse to accept a record, the filing officer will refuse to accept a UCC document if:*

(a) The UCC document contains the name or address of more than one secured party or assignee and any part of the name or address of a secured party or assignee is missing or illegible; or

(b) An address is not specified in the address field of the form used for filing the UCC document.

2. As used in this section, “address” means a street address or post office box, and a city, state and postal code.

Sec. 19. *If the filing officer finds grounds to refuse to accept a UCC document, the filing officer will return the UCC document to the remitter and refund the filing fee.*

Sec. 20. *If the filing officer notices a potential defect in a UCC document, whether or not the document was filed or refused for filing, the filing officer may so inform the filer or remitter, but has no duty to do so. The responsibility for the legal effectiveness of a filing rests with the filer and the remitter, and the filing officer has no responsibility for the legal effectiveness of a filing.*

Sec. 21. *If a secured party or a remitter demonstrates to the satisfaction of the filing officer that a UCC document which was refused for filing should not have been so refused, the filing officer will:*

1. File the UCC document as provided in sections 2 to 42, inclusive, of this regulation with a filing date and time assigned when the filing occurs; and

2. File a filing officer statement that provides the effective date and time of filing, which must be the date and time the UCC document was originally tendered for filing.

Sec. 22. *1. The filing officer will use an information management system to store, index and retrieve information relating to financing statements and other UCC documents. The information management system will include:*

(a) An index of the names of debtors named on financing statements that have not lapsed.

(b) Identification numbers, as follows:

(1) Each initial financing statement will be identified by a unique file number assigned pursuant to NRS 104.9519. The file number will be stamped on a written initial financing statement or otherwise permanently associated with the record maintained for the initial financing statement in the information management system. A record will be created in the information management system for each initial financing statement, and all information composing the record will be maintained in the system. The record will be identified by the same information assigned to the initial financing statement.

(2) A UCC document other than an initial financing statement will be identified by a unique file number assigned by the filing officer. In the information management system, records of all UCC documents other than initial financing statements will be linked to the record of their related initial financing statement.

2. The type of UCC document from which data is transferred will be identified in the information management system from information supplied by the remitter.

3. The filing date and filing time of UCC documents will be stored in the information management system. Calculation of the lapse date of an initial financing statement will be based on the filing date.

4. The names and addresses of debtors and secured parties will be transferred from UCC documents to the information management system using one or more data-entry or transmittal techniques.

5. Each financing statement will have the status of active or inactive in the information management system.

6. The total number of pages in a UCC document will be maintained in the information management system.

7. The information management system will indicate whether or not a financing statement will lapse and, if so, when it will lapse. The lapse date will be determined as provided in NRS 104.9515.

Sec. 23. The names of individuals will be stored in files that include only the names of individuals and not the names of organizations. Separate data-entry fields will be established for the first, middle and last names of individuals. A filer shall place the name of a debtor who has only a single name in the last-name field. The filing officer assumes no responsibility for the accurate designation of the components of a name, but will accurately enter the data in accordance with the designation provided by the filer.

Sec. 24. 1. A filer shall not include in a UCC document:

(a) A prefix or title, including, without limitation, "Doctor," "Reverend," "Mr." and "Mrs."

(b) A suffix or title that is not part of the name of an individual, including, without limitation, “M.D.” and “Esq.”

2. A filer may include in a UCC document a suffix that specifies the individual being named, including, without limitation, “Senior,” “Junior,” “I,” “II” and “III.” Such a suffix must be entered in the field designated for name suffixes.

3. Notwithstanding the provisions of subsections 1 and 2, if a UCC document is submitted with designated name fields, the data will be entered in the information management system exactly as it appears in those name fields.

Sec. 25. 1. *If a name is specified for a trust in its organic documents, the full legal name of the trust as set forth in those documents must be used in a UCC document and the trust will be treated as an organization. If a trust is not so named, the name of the settlor must be used. If the settlor is an organization, the name will be treated as an organization name. If the settlor is an individual, the name will be treated as an individual name.*

2. A UCC document that uses the name of the settlor must include other information provided by the filer to distinguish the debtor trust from other trusts having the same settlor, and all financing statements filed against trusts or trustees acting with respect to property held in trust must indicate the nature of the debtor. If this is done in, or as part of, the name of the debtor, it will be entered in the information management system as if it were a part of the name.

Sec. 26. 1. *Upon the filing of an initial financing statement:*

(a) Each secured party named on the initial financing statement must be a secured party of record, except that if the initial financing statement names an assignee, the secured party who

is the assignor must not be a secured party of record and the secured party who is the assignee must be a secured party of record.

(b) The status of a debtor named on the initial financing statement must be active. The status of such a debtor must continue as active for 1 year after the financing statement lapses.

(c) The status of the financing statement must be active. A lapse date 5 years after the filing date must be calculated, unless the initial financing statement indicates that it is filed:

(1) With respect to a public-financing transaction or a manufactured-home transaction, in which case the lapse date must be 30 years after the filing date; or

(2) Against a transmitting utility, in which case there must be no lapse date.

2. A financing statement remains active for 1 year after it lapses, or if it indicates that it is filed against a transmitting utility, for 1 year after it is terminated with respect to all secured parties of record.

Sec. 27. 1. *An amendment to a financing statement affects the status of the debtors and secured parties as follows:*

(a) An amendment that amends only the description of collateral or one or more addresses has no effect on the status of any debtor or secured party. If such an amendment:

(1) Is authorized by less than all of the secured parties, the amendment affects only the interests of each authorizing secured party.

(2) Adds collateral and is authorized by less than all of the debtors, the amendment affects only the interests of each authorizing debtor.

(b) An amendment that changes a debtor's name has no effect on the status of any debtor or secured party, except that the related initial financing statement and all related UCC documents that include an identification of the initial financing statement will be cross-

indexed in the information management system so that a search under either the debtor's old name or the debtor's new name will reveal the initial financing statement and the related UCC documents. Such an amendment affects only the rights of its authorizing secured parties.

(c) An amendment that changes the name of a secured party has no effect on the status of any debtor or any secured party, but the new name will be added to the index as if the name were a new secured party of record.

(d) An amendment that adds the name of a new debtor has no effect on the status of any party to the financing statement, except that the name of the new debtor will be added as a new debtor on the financing statement. The addition affects only the rights of the secured parties authorizing the amendment.

(e) An amendment that adds a new secured party has no effect on the status of any party to the financing statement, except that the name of the new secured party will be added as a new secured party on the financing statement.

(f) An amendment that deletes a debtor has no effect on the status of any party to the financing statement, even if the amendment purports to delete all debtors.

(g) An amendment that deletes a secured party of record has no effect on the status of any party to the financing statement, even if the amendment purports to delete all secured parties of record.

2. An amendment has no effect on the status of the financing statement, except that a continuation may extend the period of effectiveness of the financing statement.

Sec. 28. 1. *An assignment has no effect on the status of the financing statement.*

2. An assignment has no effect on the status of the parties to the financing statement, except that each assignee named in the assignment becomes a secured party of record.

Sec. 29. 1. *Upon the timely filing of a continuation of a financing statement by a secured party of record, the lapse date of the financing statement is extended for 5 years.*

2. *The filing of a continuation of a financing statement has no effect on the status of any party to the financing statement.*

3. *Upon the filing of a continuation of a financing statement, the status of the financing statement remains active.*

Sec. 30. 1. *The filing of a termination of a financing statement has no effect on the status of any party to the financing statement.*

2. *The filing of a termination of a financing statement has no effect on the financing statement and the financing statement will remain active in the information management system for 1 year after it lapses, unless the termination relates to a financing statement that indicates it is filed against a transmitting utility, in which case the financing statement will become inactive 1 year after it is terminated with respect to all secured parties of record.*

Sec. 31. 1. *The filing of a correction statement has no effect on the status of any party to the financing statement.*

2. *The filing of a correction statement has no effect on the status of the financing statement.*

Sec. 32. *If a continuation of a financing statement is not timely filed, the financing statement lapses on its lapse date, but the filing officer will take no action concerning the financing statement at that time. On the first anniversary of the lapse date, the information management system will render the financing statement inactive and the financing statement will no longer be made available to a searcher unless inactive financing statements are*

requested by the searcher and the financing statement is still retrievable by the information management system.

Sec. 33. The filing officer may at any time correct an error made by his employees in the information management system. If the correction occurs after the filing officer has issued a certification date, the filing officer will file a filing officer statement in the information management system identifying the record to which it relates, specifying the date of the correction and explaining the nature of the corrective action taken. The record will be preserved as long as the record of the initial financing statement is preserved in the information management system.

Sec. 34. A filing must designate whether a name is the name of an individual or an organization. If the name is that of an individual, the first and last names must be given, and a middle name or initial and any permissible suffix may be given.

Sec. 35. 1. The filing officer will enter the name of an organization as specified in a UCC document into the information management system exactly as the name of the organization is set forth in the UCC document, even if it appears that multiple names are set forth in the document or if it appears that the name of an individual has been included in the field designated for an organization name.

2. The filing officer will enter the first, middle and last names of an individual and any suffix as specified in a UCC document into the information management system exactly as those names are set forth in the UCC document.

Sec. 36. The filing officer will take no action upon receipt of notification of a bankruptcy proceeding involving a debtor named in the information management system, regardless of whether that notification is formal or informal.

Sec. 37. The filing officer will maintain for public inspection a searchable index for all records of UCC documents. The index will provide for the retrieval of a record by the name of the debtor and by the file number of the initial financing statement and each filed UCC document relating to the initial financing statement.

Sec. 38. A UCC search request may be delivered to the filing officer by any of the methods by which a UCC document may be delivered to the filing officer pursuant to section 13 of this regulation. A UCC search request concerning a debtor named on an initial financing statement may be made by an appropriate indication on the face of the form for the initial financing statement if the form is entitled to be filed and the appropriate filing fee and search fee are tendered with the initial financing statement.

Sec. 39. 1. A UCC search request must contain:

(a) The name of the debtor to be searched and whether the debtor is an individual or an organization. A search request will be processed using the name in the exact form it is submitted.

(b) The name and address of the person to whom the search report is to be sent.

(c) The appropriate search fee.

2. If a filer requests a search at the time a UCC document is filed, the search will be of the name of the debtor as set forth on the form used for filing the UCC document. The requesting party must be the remitter of the UCC document, and the search request shall be deemed to request a search that would retrieve all financing statements filed on or before the date the UCC document is filed.

Sec. 40. 1. A UCC search request may limit the copies requested by limiting the search to the city of the debtor, the date or range of dates of filing, or the identity of the secured party of record on the financing statement.

2. A report created by the filing officer in response to such a request will contain the following statement: “A limited search may not reveal all filings against the debtor searched, and the requester of the search bears the risk of relying on such a search.” The request may ask for copies of UCC documents identified on the primary search request.

Sec. 41. 1. Search results will be created by applying standardized search logic to the name presented to the filing officer. Human judgment will not play a role in determining the results of the search.

2. The following rules apply to searches:

(a) There is no limit to the number of matches that may be returned in response to the search criteria.

(b) No distinction will be made between upper and lower case letters.

(c) Punctuation marks and accents will be disregarded.

(d) Words and abbreviations at the end of a name that indicate the existence or nature of an organization as set forth in the “IACA List of Ending Noise Words” adopted by the International Association of Corporation Administrators will be disregarded. The list is hereby incorporated by reference and may be obtained free of charge from the Kansas Secretary of State, Memorial Hall, 120 SW 10th Avenue, Topeka, Kansas 66612-1594, or on the Internet from the website of the International Association of Corporation Administrators at <<http://www.iaca.org/sts/>>.

(e) The word “the” at the beginning of the search criteria will be disregarded.

(f) All spaces will be disregarded.

(g) For the first and middle names of individuals, initials will be treated as the logical equivalent of all names that begin with those initials. If no middle name or initial is provided, the middle name will be equated with all middle names and initials. For example, a search request for “John A. Smith” will cause the search to retrieve all filings against all individual debtors with “John” as the first name, “Smith” as the last name, and with the initial “A” or any name beginning with “A” in the middle-name field. If the search request were for “John Smith,” with no designation in the middle-name field, the search would retrieve all filings against individual debtors with “John” as the first name, “Smith” as the last name, and with any name or initial or no name or initial in the middle-name field.

3. After applying the rules provided in subsection 2 to modify the name to be searched, the search will reveal only names of debtors that are contained in active financing statements and match the name requested.

Sec. 42. *Reports created in response to a search request will include the following:*

1. Identification of the filing officer and the certification of the filing officer required by the UCC.

2. The date the report was generated.

3. Identification of the name searched.

4. The certification date and time for which the search is effective.

5. Identification of each initial financing statement which has not lapsed and which was filed on or before the certification date and time corresponding to the search criteria, by the name of the debtor, the identification number, and the filing date and filing time.

6. For each initial financing statement on the report, a listing of all related UCC documents filed by the filing officer on or before the certification date.

7. Copies of all UCC documents revealed by the search and requested by the person who requested the search.