

MEMORANDUM

Date: February 27, 2009

To: Edwin E. Smith, Chair
Steven L. Harris, Reporter

From: Paul Hodnefield
Jim Prendergast
Observers Representing the Joint Task Force on Filing Office Operations & Search Logic

Re: Official Comment to UCC Section 9-520

During the discussions at the meeting in Portland on February 8, 2009, representatives of the Joint Task Force on Filing Office Operations and Search Logic were invited to submit a draft Comment to clarify that filing offices must apply the same rejection standards to the content of both written and electronic records.

Some filing offices currently impose different or additional substantive requirements for the filing of electronic UCC records than those applicable to written records. For example, at least two states refuse to accept an electronic record that contains certain words in the collateral statement, but will accept the identical text in a written record. The filing systems in these states will not accept an electronic record that contains a “hot word.” After refusal, the filer must resubmit it as a written record. One of these states even keeps its “hot word” list secret. Consequently, filers face uncertainty, increased costs and unexpected delay if they choose to submit UCC records electronically.

Our concern is that without a clear prohibition in the Article 9 comments, more states will impose additional requirements for electronic records that have nothing to do with sufficiency of the record or the ability of the filing office to correctly index it. To discourage states from taking such action, we respectfully submit the following suggestion for an amendment to Section 9-520 Comment 2:

2. Refusal to Accept Record for Filing. In some States, filing offices considered themselves obligated by former Article 9 to review the form and content of a financing statement and refuse to accept those that they determine are legally insufficient. Some filing offices imposed requirements for or conditions to filing that do not appear in the statute. Under this section, the filing office is not expected to make legal judgments and is not permitted to impose additional conditions or requirements.

This section also prohibits the filing office from imposing different or additional content requirements based on the method or medium of communication. For example, a filing office that accepts electronic records could not refuse to accept a record communicated electronically based upon contents of the name or collateral fields if it would accept the same information in a written record. Nor may the filing office refuse to accept a record for failure to provide information in the record in addition to the information otherwise required by this Part.

Subsection (a) both prescribes and limits the bases upon which the filing office must and may reject records by reference to the reasons set forth in Section 9-516(b). For the most part, the bases for rejection are limited to those that prevent the filing office from dealing with a record that it receives—because some of the requisite information (e.g., the debtor’s name) is missing or cannot be deciphered, because the record is not communicated by a method (e.g., it is MIME – rather than UU – encoded) or medium (e.g., it is written rather than electronic) that the filing office accepts, or because the filer fails to tender an amount equal to or greater than the filing fee.