

3.3.3.1 UCC and Lien Searches, Results and Reporting Policy

(Updated 11-8-04; Effective 12-1-04; Disclaimer updated on 8-31-05 to include reference to Unlapsed filings and the web address for the policy.)

I. Policy Introduction

- A. CorpDirect Agents, Inc. is committed to providing reliable and good faith public record search results. Revisions to Article 9 of the Uniform Commercial Code (RA9) has brought much attention to issues relating to how our industry must provide UCC lien searches, our due diligence responsibility, and education of clients regarding RA9 without providing legal advise.
- B. Article 9 of the Uniform Commercial Code (UCC) relates specifically to Secured Transactions. The Uniform Commercial Code is comprised of articles that recommend statutory language to state legislatures in an attempt at uniformity in the laws governing commercial issues and transactions. These articles are developed through the National Conference of Commissioners on Uniform States Laws, who “provides states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law.” Article 9 of the Uniform Commercial Code was established to protect the rights of secured parties who extend credit secured by personal property. Article 9 governs most transactions that couples a debt with a creditor's interest in a debtor's personal property. If the debtor defaults, the creditor may repossess and sell the collateral to satisfy the debt. Financing statements are the main recording method used to perfect a security interest. Recording a financing statement as a public record documents the existence of a security interest in specific collateral. As a matter of terminology, our reference to UCC actually relates to the financing statements filed under Article 9 of the Uniform Commercial Code. The majority of the states adopted Article 9 in 1962 with few changes occurring until it was revised in 1972. What we now refer to as Revised Article 9 (RA9) refers to the latest major revision that became effective in most states on 7-1-01, although a few state adopted the revisions subsequently, including Florida which adopted RA9 effective 1-1-02.
- C. CorpDirect Agents, Inc. is committed to understanding and continuing our education as it relates to Article 9.

II. Revised Article 9 and UCC Searching

- A. RA9 delineated several requirements to central filing offices which affect how UCC searches should be performed and reviewed:
 1. RA9, which has been adopted by all states, created what is termed an open drawer or “Full Disclosure UCC system” whereby the determination of whether financing statements are effective is treated as a legal question, not an administrative one, and allows filing offices to merely place filing information into public record for examination after specific filing criteria is met under the limited rejection authority established (§9-519; §9-520).
 2. Therefore, central filing offices no longer follow the practice of automatically removing a filing from the debtor name index when a termination statement is filed.
 3. Under RA9, debtors may file termination statements, however, they are only effective if the secured party should have filed a termination and failed to do so. This causes the search reviewer to be responsible for determining the effectiveness of filed terminations.

- B. Under RA9, central filing offices are required to maintain all filings on their debtor name index for at least one year after their schedule lapse dates (lapse plus one year). (§9-519; §9-520.)
 - C. RA9 also stipulated a precise method of determining whether a filing with a specific debtor name should be considered for legal compliance.
 - 1. Under RA9, a “debtors correct name” standard applies in determining the legal sufficiency of a UCC filing in that a debtor name must be an organization or individual’s exact, full, unabbreviated legal name. (§9-503.)
 - D. CorpDirect Agents has adopted the UCC and Lien Searches, Results and Reporting Policy contained herein after careful review and consideration of our responsibility to our clients as a diligent searcher of UCC public records under RA9.
 - E. CorpDirect Agents, Inc. trains and updates staff regarding RA9 and how to handle orders and requests in that regard.
 - F. To enhance education for clients regarding RA9, the company has developed an approved seminar/presentation that can be provided free of charge to clients and prospects both personally and via the company website. These materials are intended to provide a general idea or overview of some of the major recommended revisions, not only for Florida but on a national perspective as well. The company will not attempt to provide a complete summary of all of the revisions and highly suggests to clients that final statutory revisions and new requirements be thoroughly reviewed by counsel to make a legal determination as to how it may affect their future filings.
 - G. To enforce our commitment to not provide legal advise, representatives of the company are not allowed to offer legal advise in this or any other area to any client or other person. Representatives may direct individuals to presentation materials, which has been developed in conjunction with our attorney(s).
 - 1. Representatives are only authorized to offer the following as an explanation to clients on why they may want to review terminated UCC filings. This statement has been developed and approved by our attorney as a summary statement of one possible revision:
 - a. “One example of why you may want to review terminated filings is to determine the effectiveness of debtor filed terminations. Under RA9 debtors can now file terminations that are only effective if the Secured Party should have filed and failed to do so.”
 - H. On November 15, 2004, CorpDirect Agents, Inc. will begin noticing clients by email, phone system message, with UCC search results and via work products mailings that effective 12-1-04, CorpDirect Agents will perform and conduct searches according to the following policies contained herein.
- III. Searches, Results and Reporting
- A. Results and Reporting
 - 1. CorpDirect Agents policy regarding UCC searches is to report all unlapsed UCC filings reflected in the index of a filing office to include termination statements filed after the effective date of RA9 in the respective jurisdiction in which the search is being conducted (‘Unlapsed and Terminated Search’); unless specifically requested at the time of each order to additionally report lapsed filings.
 - a. At such time as lapsed filings are requested, all lapsed filings will be reported up to one year past the scheduled lapse date (‘Lapse Plus One Search Option’).

- b. If a filing officer performs a search at our request, we will be required to provide the results to our client exactly as provided by the filing office.
- c. Reports are to attest to findings exactly as reflected in an index based on the name searched.

B. Searches

1. In behalf of its clients, CorpDirect Agents either performs or conducts UCC and lien searches, as defined:
 - a. Perform: To physically do or perform a particular search using CorpDirect Agents staff via direct access to a filing office index; or
 - b. Conduct: To direct or conduct the operation of a UCC search being performed by another service company, searcher, or filing office.
2. Based on RA9 requirements for diligent searching, CorpDirect Agents, Inc. performs legal compliance UCC searches using the standard search logic provided by filing offices and attests to results for a debtor name exactly as given.
 - a. In an effort toward due diligence, CorpDirect Agents will perform partial-name searches (judgment-based search method) as possible and will provide any name variations or mis-indexed filings found to the client.
 - b. When a filing office does not provide a search using standard search logic, such as Florida, CorpDirect Agents then performs searches so as to return at least “exact name matches” using any reasonable search method, to include either full and/or partial-name method searches and attests to results for a debtor name exactly as given.
3. Based on RA9 requirements for diligent searching, CorpDirect Agents conducts legal compliance UCC searches through service companies, searchers or filing offices that use the standard search logic provided by filing offices and attests to results for a debtor name exactly as given.
 - a. When a filing office does not provide a search using standard search logic, CorpDirect Agents will conduct searches through service companies, searchers or filing offices that are conversant with all the search options available to search the respective filing office index, including performing searches so as to return at least “exact name matches” using any reasonable search method, to include either full and/or partial-name searches and attests to results for a debtor name exactly as given on all searches conducted.
 - b. As many states require UCC searches be performed by the filing office and such offices generally perform exact, full-name searches using their standard search logic, CorpDirect Agents will attest to results for such a debtor name search exactly as given.
 - c. Where CorpDirect Agents conducts a search through service companies and/or filing offices, we will provide any name variations reported during such searches.
4. Searches of additional debtor names that may be derived from name variations requested will result in additional search fees as we will be attesting separately to the reliability of such search.
5. CorpDirect Agents, Inc. approves the following disclaimer regarding our UCC search reports and results:
 - a. “CorpDirect Agents, Inc. is not liable for any errors or omissions on the part of any other search company, searcher, filing officer of any public records custodian,

clerk or representatives of the court, or representatives of any local, state or federal government. Please note the responsibility for verification of records and/or indexes and determination of the information therein lies with the filing officer. By policy, CorpDirect Agents, Inc. performs or conducts UCC searches on a subject name EXACTLY AS GIVEN for Unlapsed filings including terminations filed after the effective date of RA9. You should obtain a thorough review of RA9 by legal counsel to consider its affect on your transactions including your review of terminated filings. CorpDirect Agents, Inc. is liable only for an amount not to exceed the fee paid for the specific services giving rise to any claim for liability. View our complete search policy at www.corpdirect.com/UCC_Searches_Policy.pdf.”

6. CorpDirect Agents, Inc. will provide with any search results the time frame of the search period to include years searched and a thru date for the custodian’s records in order to attest to the period of time for which the search was performed.
7. If the search was performed by a correspondent, CorpDirect Agents, Inc. will report the years searched and thru date as reported by the correspondent according to their policies and those of any custodian of records.

C. History

1. CorpDirect Agents, Inc. noticed clients by email (eff. 1-1-02), by notices forwarded with UCC search results and by notices forwarded via mail with work products that the combination of certain RA9 revisions and state indexing policies may require a review of inactive filings to provide complete information about a debtor and that we searched according to the following:
 - a. From 1-1-02 (effective date of RA9 in Florida) until December 1, 2004, CorpDirect Agents policy was: “to report ACTIVE FILINGS ONLY on UCC search results nationally unless specifically requested at the time of each order to report both ACTIVE & INACTIVE filings.
 - b. Inactive filings included terminated and lapsed filings.”

IV. Local UCC, Tax Liens, Judgments and Pending Suits Searches, including Bankruptcy

- A. As indicated in the Policy Introduction, CorpDirect Agents, Inc. is committed to providing reliable and good faith public record search results. In order to be consistent in our searching and reporting of results from local jurisdictions where we perform the search (Florida Secretary of State, Florida Secured Transaction Registry, Florida Counties, US Bankruptcy and US District Court, or later as determined), the following is to be followed:
 1. CorpDirect Agents policy regarding UCC searches is to report all active, unlapsed UCC filings reflected in the index of a filing office to include termination statements filed after the effective date of RA9 in the respective jurisdiction in which the search is being conducted (unlapsed and terminated); unless specifically requested at the time of each order to additionally report lapsed filings.
 - a. At such time as lapsed filings are requested, all lapsed filings should be given up to one year past the lapse date (lapse plus one).
 - b. If a filing officer performs a search at our request, we will be required to provide the results to our client exactly as provided by the filing office.
 2. Specifically, a minimum ten (10) years search is initially performed of county indexes for UCCs, Tax Liens, Judgments and Pending Suits, where possible.

3. CorpDirect Agents will go as far back in the record as possible to provide an effective filing historical record.
 - a. The years searched may be scaled down due to excess numbers of records to review.
 - b. Specific index searches are outlined further herein.
4. CorpDirect Agents, Inc. will search and attest to results for a debtor name exactly as given using the search logic provided and advertised by filing offices.
 - a. As a courtesy, any name variations found during our search will be provided to the client, where possible.
 - b. Searches of additional debtor names that may be derived from name variations requested will result in additional search fees.
5. CorpDirect Agents will search and provide results of the following local records as follows:
 - a. Federal Tax Liens at Florida Secretary of State:
 - (1) ACTIVE FILINGS ONLY unless specifically requested at the time of each order to report both ACTIVE & INACTIVE filings.
 - b. Judgment Liens at the Florida Secretary of State:
 - (1) ACTIVE FILINGS ONLY unless specifically requested at the time of each order to report both ACTIVE & INACTIVE filings.
 - c. UCCs at the County Official Records:
 - (1) All UCC filings in the initial minimum ten (10) years search period are reviewed to determine if they are valid considering five years effectiveness for UCCs by law.
 - (a) If a UCC-1 filing is older than five years, UCC-3 continuations are sought to be able to determine actual effectiveness of the UCC-1.
 - (b) UCCs that are older than five years that cannot be matched to a continuation are not reported.
 - (c) For all UCC-3 filings determined, especially continuations, CorpDirect Agents will go as far back in the record as possible to provide an effective filing historical record.
 - (2) Searches will include fixture filings (fixtures defined as property attached to real estate) if the filings are filed using the appropriate UCC financing statement forms
 - (3) Searches are not to include real estate filings, real estate related liens and mortgages unless specifically titled as a UCC-1 or UCC-3. An owners and encumbrances search must be requested in order to provide such filings to a client.
 - (4) Claim of liens or other liens not related to real estate are reported if filed under the subject name and are active or not expired.
 - (5) If a client specifically requests search to include fixture filings, CorpDirect Agents, Inc. will additionally review mortgage or security agreement including Deeds of Trusts in an attempt to locate any fixture filings liens that are not recorded using the approved UCC financing statement forms, although such filings may not be considered legally effective and should be review by legal counsel for such.
 - d. Tax Liens at the County Official Records:

- (1) 10 Years for UNSATISFIED FILINGS ONLY if made available by the custodian of records unless specifically requested at the time of each order to search further back in time and/or to provide both SATISFIED AND UNSATISFIED FILINGS.
- e. Judgments at the County Official Records:
- (1) 10 Years for any judgments, final orders or similarly titled court orders against the subject name that appear to be UNSATISFIED FILINGS as made available by the custodian of records unless specifically requested at the time of each order to search further back in time and/or to provide both SATISFIED AND UNSATISFIED FILINGS or to provide searches as both plaintiff and defendant.
 - (2) Considering e. (1) above, Final Judgments of Foreclosure and final orders of the court relating to real estate transactions against the subject name are reported.
 - (3) Considering e. (1) above, judgments or court orders of any kind when relating to a monetary value against the subject name are reported, although judgments of divorce are not reported unless there appears to be a finding of monetary value against the subject name.
 - (4) Considering e. (1) above, when Notices of Lis Pendens are found within the record, which are notices of intent to foreclose on real estate mortgages, the researcher should specifically search for Judgments and Pending Suits relating to a foreclosure on real property and will notify the client that filings may exist which warrant their consideration if the client did not request a pending suits search in addition to a judgments search and a pending suit is determined.
- f. Pending Suits:
- (1) 10 Years for OPEN FILINGS ONLY if made available by the custodian of records unless specifically requested at the time of each order to search further back in time or to perform searches as both plaintiff and defendant.
- g. U.S. Bankruptcy:
- (1) 10 Years for OPEN CASES ONLY if made available by the custodian of records unless specifically requested at the time of each order to search further back in time or to perform searches as both creditor and debtor.
- h. U.S. District Court (Judgments and Pending Suits):
- (1) 10 Years for any judgments, final orders or similarly titled court orders against the subject name that appear to be UNSATISFIED FILINGS as made available by the custodian of records unless specifically requested at the time of each order to search further back in time and/or to provide both SATISFIED AND UNSATISFIED FILINGS or to provide searches as both plaintiff and defendant.
 - (2) 10 Years for OPEN FILINGS ONLY if made available by the custodian of records unless specifically requested at the time of each order to search further back in time or to perform searches as both plaintiff and defendant.
- i. If within the course of performing index or filing searches as requested, CorpDirect Agents becomes aware of filings that are of a type that are NOT being

searched, the client is to be noticed of those filings to inquire if they would like for us to perform a search of those indexes in order to pick up the filings.