

## **REVISED ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE CHANGED FEAR OF REJECTION INTO FEAR OF ACCEPTANCE**

**By: David L. Wanetik, Esq.**

Prior to the Revision of Article 9 of the Uniform Commercial Code in 2001, the existing state provisions did not have specific statutory reasons for rejecting a filing. The result was that state and local jurisdictions created their own list of reasons to reject. The list included everything from the wrong color paper to the size of the document. In some cases the rejection was based upon how the filing officer felt that day. Attorneys often felt that some filing officers were overstepping their responsibilities when rejections were based upon what the filing officer believed were necessary corrections before accepting the filing. Such rejection reasons included mandating changes in the wording of the collateral description.

These arbitrary rules created a Fear of Rejection. Getting the filing accepted was critical because under the old rules, once a filing was accepted there was an assumption of effectiveness since the searchers had the onus to locate it using all possible variations of the debtor name. Public records companies prided themselves on their low rejection rate of their submitted filings indicating they knew the local rules and requirements which resulted in accepted filings.

The drafters of the 2001 Revision felt that this process needed to be changed. In addition to making the filer responsible for getting the name of the debtor correct, it realized it needed to provide a specific list of reasons for rejection. The operative section is UCC9-516. This was in addition to the overall concept of Revised Article 9 that the filing officers were no longer to review submitted documents for their comments or corrections. The term used in the industry is that it removed “the second set of eyes”. If the basic information was provided along with the statutory fee and none of the listed rejection reasons existed, they were required to accept and file the document.

While this change eliminated the sometimes arbitrary rejection of filings, it created a situation where filings would be accepted for filing but would be totally ineffective. As you will see, the revisions transformed a Fear of Rejection into a Fear of Acceptance.

For example, if First American Financial Corp. is a Delaware corporation and a filing is submitted to the Delaware Secretary of State listing the debtor as First American Title Corp., the clerk will take it (if enough money is offered to cover the fee) and file it. It will not check the records to determine the correct name. The filer will walk away with an acknowledgement of the filing but it will be totally ineffective. Filings have been deemed seriously misleading and ineffective in some states for the mere lack of punctuation.

If the filing now has the name correct but lists New York as the state of organization and submits it to Albany, the Secretary of State's office in Albany will accept it. It will not check the New York State corporate database to see that First American Financial Corp is a New York entity. That is not their responsibility but the responsibility of the filer. Once again an ineffective filing has been recorded.

Even if you correctly list the name and put Delaware in the organization box, but send it to New Jersey by accident, as it is not a listed reason for rejection it will be accepted. Once again, the filer walks away with acknowledgement in hand but possesses an unenforceable lien.

As it is not a listed reason to reject, failing to include a collateral description in the designated field will not result in a rejection. Since the filing officers now have limited authority to review the documents, without specific reasons to reject, the submission will be accepted and entered but with no value at all.

With a statutory list of reasons for the rejection of a filing clearly defined, the Fear of Rejection has been reduced and practically eliminated. However, with the filing officers now having strict limitations on what they can review, filers have all of the responsibility to get every aspect of the filing correct. Getting your financing filed means nothing if drafting errors result in an ineffective filing. The terms that come into play here are "effective filing" versus "recorded filing". Hence, the Fear of Rejection has been replaced by Fear of Acceptance. You got your filing accepted and you have an acknowledgement, BUT: is it effective?