

Deadline Looms for UCC Article 9: Cooperative Unit Security Interests Impacted

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Model legislation drafted by the National Conference of Commissioners on Uniform State Laws revising Article 9 ("Secured Transactions") of the Uniform Commercial Code ("UCC") was enacted in substantially the same form in the fifty states of the United States, the District of Columbia, Guam and the United States Virgin Islands. July 1, 2001 was the effective date of the revision to Article 9 ("Revised Article 9") in New York State and in most other jurisdictions.(1) Accordingly, Revised Article 9 has governed the perfection of security interests in New York State, and in most other jurisdictions, since July 1, 2001.

Generally applicable rules governing the location of the filing office in which a financing statement is to be filed when the filing of a financing statement is required to perfect a security interest were changed in Revised Article 9.2 Under Revised Article 9, except when dealing with real-property-related financing statements (concerning as-extracted collateral, timber to be cut, fixtures and "cooperative interests"), which are filed in the office in which a mortgage on the related real property would be filed, financing statements are filed in the central filing office in the jurisdiction in which the Debtor is located.(3) In New York State and in most all of the other jurisdictions, the central filing office is the office of the jurisdiction's Secretary of State.

A Debtor who is an individual is located at his or her principal residence; a debtor that is an organization other than a "Registered Organization" is located where it has its place of business if it has only one place of business, or where its chief executive office is located if it has more than one place of business. A "Registered Organization," defined by Section 9-102 of Revised Article 9 to be "an organization organized solely under the law of a single state or the United States and as to which the state or the United States must maintain a public record showing the organization to have been organized," such as a corporation or a limited liability company, is located in the State of its organization.

A financing statement filed under former Article 9 which has not lapsed and is still effective is required to comply with the filing requirements of Revised Article 9 prior to July 1, 2006 in New

York and in the majority of the other jurisdictions, which have adopted the uniform transition end date of June 30, 2006. A security interest perfected under former Article 9 by other than filing remained effective if perfected under Revised Article 9 within one year of its enactment.(4)

A security interest perfected by filing under former Article 9 in a jurisdiction that is not the Revised Article 9 location of the Debtor jurisdiction can remain effective by filing in the central filing office of the newly applicable jurisdiction either a UCC-1 financing statement or, preferably, to continue the priority of the initial filing, an "Initial Financing Statement in Lieu of a Continuation Statement." Without such a further filing under Revised Article 9, the existing financing statement will lapse and no longer be effective.

As noted above, real-property related financing statements are filed in the office in which a mortgage on the related real property would be filed, which would be the County Clerk, or the Register's office in the Counties of Manhattan, Bronx, Kings, and Queens, not in the office of New York's Department of State. The process to file a financing statement against a Cooperative Interest merits particular attention.

Cooperative Units

Section 9-102(27-b) of Revised Article 9 defines a "Cooperative Interest" as "an ownership interest in a cooperative organization, which interest, when created, is coupled with possessory rights of a proprietary nature in identified physical space belonging to a cooperative organization. "

Prior to October 1, 1988 a security interest in the shares of stock and the related proprietary lease representing ownership of a cooperative unit could be perfected by the lender taking possession of the borrower's cooperative stock and proprietary lease. On and after October 1, 1988 only the filing of a financing statement in the County in which a mortgage on the cooperative corporation's real property would be recorded could perfect such a security interest. In addition, a financing statement on a cooperative unit filed on or after October 1, 1988 could provide that it was effective until it was terminated of record.s Subject to any local filing rules, the filing would be located on a search of the recorder's document index until a Termination was filed. (For example, unless a UCC-1 filed in Westchester County stated that the "collateral is shares of stock in, and a proprietary lease from, a corporation formed for the purpose of cooperative ownership of real property," the filing was not indexed in the index for transfers involving cooperative units.) Due to Revised Article 9, these security interests will no longer be effective after June 30, 2006, unless further steps are taken by the Secured Party.

To perfect a security interest as to a Cooperative Interest under Revised Article 9, a UCC Financing Statement (Form UCC-1) must be filed in the office in which a mortgage on the cooperative corporation's real property would be recorded, without regard to the location of the Debtor. Box "6" on the UCC-1, stating that "(t)his financing statement is to be filed in the Real Estate Records," needs to be checked.

A Form UCC-1 filed against a Debtor's Cooperative Interest is sufficient under UCC Section 9-

502 only if it sets forth (i) the names of the Debtor and the secured party or its representative, (ii) the collateral covered, (iii) the number and street address of the cooperative unit and the town or city, or the county if it is in New York City, (iv) that it covers a cooperative interest and is to be filed in the real estate records, (v) the name of the record owner of the real property, and (vi) a description of the real property to which the collateral relates. The description of the real property is to be made either by reference to a deed or mortgage book and page of recording or by street address, and, in the City of New York and the Counties of Nassau or Onondaga, also by reference to the book and page.

A Form UCC-1 meeting these requirements ("Minimum Standards") is effective for five years, subject to continuation. If, however, a New York UCC Financing Statement Cooperative Addendum (Form UCC1Cad) ("Cooperative Addendum") is also filed, the security interest will be effective for 50 years.

A Cooperative Addendum contains (i) the names of the Debtor, the Secured Party or its representative, and the "Cooperative Organization," (ii) identification of the collateral by its unit number, the street address (including the name of the city, town or village and county in which the cooperative unit is located), and the tax designation of the real property in which the cooperative unit is located, and (iii) the file number of the initial financing statement, if the Cooperative Addendum was not filed as an attachment to the UCC-1.

Accordingly, to initially perfect a Security Interest in a Cooperative Interest under Revised Article 9, or to continue the perfection of a Security Interest in a Cooperative Interest under Revised Article 9 of a Security Interest previously perfected under former Article 9, the following procedures need to be followed:

1. A UCC-1 filed on or after July 1, 2001 needs to comply with the requirements of Revised Article 9, and a Cooperative Addendum should be filed with the UCC-1. If a Cooperative Addendum was not filed with the UCC-1, it should be filed prior to the expiration of the five-year period for which a UCC-1 filed alone is effective.
2. When the Security Interest in a Cooperative Interest was perfected by filing before July 1, 2001, either a UCC Financing Statement Amendment (Form UCC3) filed as a Continuation (a "Continuation Statement"), which provides perfection of the Security Interest for only five years, or a Cooperative Addendum, which provides perfection of the Security Interest for 50 years, needs to be filed. The filing of a Cooperative Addendum for 50 year perfection is the preferred alternative. A UCC3 Financing Statement Amendment for a "Collateral Change" should also be filed if the existing UCC-1 does not satisfy the Minimum Standards. Box "8" ("Amendment") should be checked to "add" collateral by setting forth the address and block and lot of the real property owned by the cooperative corporation and the name of the cooperative corporation as the Record Owner of the real property. The New York City Register has advised the author that the Amendment can be filed with a Cooperative Addendum as a single

filing for one filing fee. Filing procedures will need to be verified in other recording offices.

3. Where a security interest in the shares of stock and a proprietary lease representing ownership of a cooperative unit was perfected by possession only before October 1, 1988, a UCC1 and a Cooperative Addendum need to be filed before July 1, 2006; the Security Interest in the Cooperative Interest will then be perfected under Revised Article 9 for 50 years.⁶

Lenders and their counsel should act to ensure their UCC filings are in compliance with Revised Article 9 in advance of July 1, 2006. Recognized experts in the filing of financing statements who can provide assistance include Clare Oliva at National Corporate Research (800) 221-0102 and, as to cooperative units, Eva-Marie Davis at Modern Abstract Corporation (212) 880-0720. A lender with a security interest perfected under former Article 9 complying with Article 9 may also consider obtaining a title policy to insure that its interest is properly perfected under Revised Article 9.

Endnotes

1. Revised Article 9 as enacted became effective in Connecticut on October 1, 2001 and in Alabama, Florida and Mississippi on January 1, 2002.
2. A Security Interest may also be perfected without filing merely by "Attachment," by possession by or delivery to the Secured Party, or by the Secured Party having Control of the Collateral, depending on the type of the Collateral.
See NY UCC Section 9-308 through Section 9-314.
3. Under Section 9-401 of New York's former Article 9, the office in which a financing statement was to be filed was determined by rules relating to the Debtor's place of business and, in certain instances, the location of the collateral.
4. NY DCC Section 9-705.
5. McKinney's Unconsolidated Laws Ch 333 (1988).
6. Revised Article 9 Forms can be obtained on the New York State Department of State's WEB Site at <http://dos.state.ny.us/corp/uccforms.html>.