

## IT'S NOT TOO LATE IN N.C. TO CONTINUE A UCC-1 FINANCING STATEMENT AFTER THE JUNE 30, 2006 CUT-OFF DATE!

Just in case you missed the June 30, 2006 cut-off date for continuing your UCC-1 financing statement, all is not lost. The North Carolina legislature recently enacted an amendment to § 25-9-705 which provides a grace period for the filing of a continuation statement which ordinarily would lapse after June 30, 2006 but prior to January 1, 2007. The new law provides that if the financing statement would lapse prior to January 1, 2007 and if a continuation statement is filed prior to the time that the financing statement would have lapsed under the former Article 9, the financing statement will continue in effect as long as the jurisdiction for filing has not changed.

This legislation was necessary to clear up an ambiguity which occurred when Revised Article 9 was enacted on July 1, 2001 in North Carolina. Section 9-705 (c)(2) of Revised Article 9 provides that financing statements filed under former Article 9 ceased to be effective on June 30, 2006 (the "cut-off date"). Therefore action was required to be taken prior to the cut-off date to ensure that financing statements filed under former Article 9 remained effective after June 30, 2006.

At issue was whether the state law governing perfection of the security interest under Revised Article 9 is the same state in which the financing statement was filed under former Article 9.

### "Different State" Affective Financing Statements

If the state law governing perfection has changed, the answer is clear. For example, if perfection under Revised Article 9 requires filing a financing statement in a different state (i.e. where the Debtor is incorporated, rather than where he does business), then the secured party must file an initial financing statement in lieu of a continuation statement under 9-706 in the state governing perfection under Revised Article 9 at any time before the earlier of: (1) the financing statement's normal lapse date; or (2) June 30, 2006. The new law does not address or change this requirement.

### "Same State" Affected Financing Statements

Prior to the enactment of the North Carolina legislation, it was not clear where a financing statement has to be filed in the same state under Revised Article 9 as under former Article 9. Will the effectiveness of such a financing statement lapse if no continuation statement is filed, and when does the period for filing a continuation statement begin? For example, assume that a financing statement was originally filed on November 1, 1996 and continued under former Article 9 by the filing of a continuation statement on or before July 1, 2001. The window for filing a second continuation statement would be from May 1, 2006 (6 months before the normal lapse date) through June 30, 2006 – a period of only two months. Suppose a financing statement had originally been filed on December 30, 1996 and continued before July 1, 2001. In this

scenario the filing window for a second continuation statement would be only 1 day – June 30, 2006.

Attempting to eliminate the possibility of an untimely filing in North Carolina, the North Carolina Legislature amended the statute with respect to a same state effective financing statement.

Note that this law alert does not deal with issues created by non-uniformities in other states. For example, Revised Article 9 became effective in North Carolina and 45 other states on July 1, 2001. Four other states – Connecticut, Alabama, Florida, and Mississippi – had non-uniform effective dates. Two states, Maryland and Arizona, had non-uniform effectiveness periods for financing statements filed under former Article 9. Instead of a 5 year effectiveness period, Maryland has a 12 year period and Arizona has a 6 year effectiveness period under former Article 9. Thus not all states have a June 30, 2006 cut-off date under Section 705(c)(2) of Revised Article 9. Alabama and Mississippi have a December 31, 2006 cut-off date and Arizona's cut-off date is June 30, 2007.

Should you have any questions regarding the effectiveness of your UCC financing statement, please feel free to contact one of the members of the Bankruptcy/Creditors' Rights group who will be glad to assist you.

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