



The Uniform Commercial Code (UCC)

The Uniform Commercial Code (UCC) is a law enacted in all 50 states to regulate commercial transactions. Article 9 of the UCC allows for a public notice (UCC-1) to be filed in a designated state filing office by dealers (or lenders) to perfect their security interests in equipment that is bought and/or financed. The UCC-1 filing is valid for five years and can be continued to extend the financing statement for additional terms of five years. Filing is usually with the office of the Secretary of State in the state of residence, incorporation or business formation.

The Uniform Commercial Code (UCC)

What it means to your business

Why you need to know about the UCC law

As a buyer and/or a seller of equipment, you need to protect yourself and your business from potential losses because of outstanding equipment liens.

Example

A customer purchases a new tractor for \$80,000; you give the customer a \$30,000 trade-in allowance on a used tractor. The customer tells you there is no lien on the trade-in tractor or shows you a letter stating he/she paid off ABC Credit Company for the used tractor.

You sell the used trade-in tractor for \$40,000. Remember: the customer claimed to have paid off ABC Credit Company, but forgot to tell you about a blanket lien held by a local bank for an operating loan in place for 10 years. If your customer gets into financial trouble or goes bankrupt, the local bank will contact you for the \$40,000 you received on the sale of the used trade-in tractor because the lien stays with the equipment or its "proceeds." If the bank goes after you and the proceeds in this situation, you will have to pay the bank and may have no recourse against the customer.

How to check for a UCC-1 filing

Conduct a UCC search with the office of the Secretary of State or other agency responsible for UCC filings in your state. Generally, you only need to perform a search in the state where the customer is located or resides using the customer's correct legal name and the following rules:

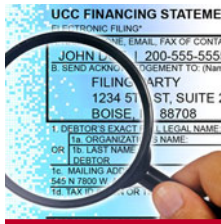
- **Individual:** Search the state where the customer resides.
- **Corporation, LLC, Limited Partnership:** Search in the state where the business is incorporated or organized.
- **General Partnership:** Search in the state where the partnership has its principal place of business and in the state(s) where its general partners reside.

Until July 1, 2006*, you must conduct a UCC search in the state where the equipment is or was located since the UCC is in a transitional period between old and new versions of the law.

* The following states have later transition end dates:
Arizona - 7/1/07; Alabama and Mississippi - 12/31/06.

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Existing liens

If a lien is specific to a piece of equipment involved in a trade, require the customer to pay off the lien before the sale or trade or have the lien paid off simultaneously with the sale.

If the lien is a blanket lien, obtain a written release from the bank (the secured party) on the equipment. A release can be as simple as one sentence. Banks will generally consent because its customer is getting replacement collateral with equity available to the bank that is equal to the value of the trade-in.

Correct legal name

Individuals or sole proprietors

- Whether an individual or sole proprietor, always identify customers by their correct legal names.
- **Never** use trade names or d/b/a.
- Ask the customer for a valid driver's license, birth certificate, Social Security card or other form of identification (*Requesting this type of documentation may seem impractical, but it's the best way to ensure that your dealership obtains a customer's correct legal name.*)

Example

Your customer is known as Jack R. Doe but his legal documents identify him as John Robert Doe. You must use the legal name John Robert Doe.

If Jack goes by more than two names or if more than one variation of his name is discovered on documents, you can file multiple financing statements or use the special Multiple Name form and file just one financing statement.

- Failing to search or file a UCC-1 with the correct legal name may cause you to overlook liens or lose the perfected status of your security interest and priority over others.

Corporation, Limited Liability Co. (LLC), Limited Partnership

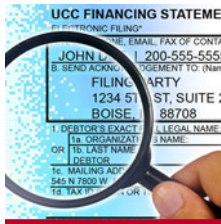
- Use the name on the Articles of Incorporation or equivalent filed with the state of incorporation or organization, typically the office of Secretary of State.
- Debtor says the name of his/her company is *Doe Farms, Inc.*, a Kansas corporation. But when you check with the Secretary of State, the office identifies the debtor company as *Doe Family Farms, Inc.* Use the Doe Family Farms, Inc. in your searches and filings.
- Contact the appropriate state agency to identify the correct legal name. Obtaining a copy of the Articles of Incorporation and all amendments to those articles is the safe choice.

General Partnership

- General Partnerships (GP's) are not registered organizations in most states. GP's are registered organizations in California and the option of filing organization documents in some other states is allowed.
- The correct name of a General Partnership is the name identified on its organization document or partnership agreement.
- Ask the debtor to see the partnership agreement to confirm the correct legal name is used.
- The best practice is to search and file under the names of all the general partners in addition to the partnership name.

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Customer name changes

When a customer (debtor on which you have filed a UCC-1) changes its name (generally corporations or limited liability companies) or when a person or organization purchases all the debtor's assets or succeeds to all its liabilities and becomes a new debtor, you should:

- File an amendment to the original UCC-1 for a pure name change, e.g., Doe Farms, Inc. changes its name to Doe Family Farms, Inc.
- File a new UCC-1 if another person or organization becomes a new debtor, e.g., Doe Family Farms, Inc. purchases Smith Farms, Inc.

If you fail to file an amendment or original UCC-1 to reflect the name change, it is not considered a perfected security interest in any collateral acquired beyond four months of the change.

In doing lien searches, use both the old and the new correct legal names.

Customer location changes

If a customer/debtor changes location, e.g., an individual moves across state lines or a general partnership moves its principal place of business to another state, your financing statement is in effect for whichever of the following time periods occurs first:

- four months after the debtor changes location, or
- the original financing statement lapses.

You should file a new UCC-1.

If you fail to file a new UCC-1 in the new location within the time periods previously mentioned, your security interest is deemed unperfected and loses its effectiveness to any subsequent purchaser for value.

Equipment is transferred / moved to another location

If your customer/debtor transfers equipment to a third party, your security interest stays with the equipment unless you consent to the transfer free of the security interest. The consent and release should be in writing.

However, if a third party is located in another state, your financing statement is in effect for whichever of the following time periods occurs first:

- one year after the transfer and change in location, or
- the original financing statement lapses.

You should file a new UCC-1.

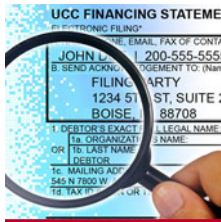
If you fail to file a new UCC-1 in the new location within the time periods previously mentioned, your security interest is deemed unperfected and loses its effectiveness to any subsequent purchaser.

Where to file a UCC-1 statement

- If your customer is an individual or sole proprietor, **always** file it with the state where the customer resides using the customer's correct legal name.
- If your customer is a corporation, **always** file it with the state where the corporation is incorporated using the customer's correct legal name.
- If your customer is a limited liability company (LLC), **always** file it with the state where the LLC is organized using the customer's correct legal name.

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The best ways to protect yourself

- Always conduct a UCC search.
- Always use the correct legal name on the UCC-1.
- Always ask the customer about existing liens.
- Always pay attention to changes affecting the security interest.

Recommended best practices for your dealership

UCC process for financing a transaction

- Name Verification
- UCC Search
- Federal & State Tax Lien
- Pending Suits and Judgments
- UCC Filing
- Search to Reflect
- Monitor and Track It

UCC process for not financing a transaction

- Name Verification
- UCC Search

This summary is a product of a UCC task force appointed by the NAEDA board of directors in 2005 to provide equipment dealers with basic UCC concepts that apply to their businesses. While NAEDA's counsel Jack Selzer reviewed these materials, they should not be construed as legal advice. In fact, if you have a particular problem or question you should consult with a qualified professional to help you. There are variations of the UCC and its interpretation in various states. Moreover, state statutes are often modified and this summary may not reflect these changes.

The links in the source map are provided to assist dealers in their UCC searches and Internet links are subject to change without notice. Dealers with questions about conducting UCC searches are encouraged to consult with professional sources, including those shown on the map of UCC Resources by State.

Common UCC terms

Article 9, Uniform Commercial Code: Revised Article 9 of the UCC law governs the creation and perfection of security interests and provides for centralized filing, generally with the office of the Secretary of State.

Secured Party: The dealer or retail party financing a customer's purchase and has been granted a security interest by the debtor.

Debtor: The customer.

UCC-1 Financing Statement: A document created to provide public notice that a secured party may have a security interest in a debtor's listed property.

UCC-3: A document used to add, delete or change information on a filed UCC-1. It can also be used to terminate, assign or continue a secured party's interest.

Security Interest: An interest in equipment granted to the secured party to secure payment of the amount financed on a piece of equipment.

Perfected Security Interest: A security interest that becomes enforceable against competing interests by third parties. Filing a UCC-1 in the public record is normally a required part of the perfection process.

Priority: Once perfected, the secured party has priority to the collateral over other secured parties that perfected at a later date. Unless a security interest is perfected under the UCC, the secured party may lose its priority on the equipment to subsequent lenders.

Security Agreement: An agreement that describes the equipment being financed and grants the secured party a security interest in the equipment.

Purchase Money Security Interest (PMSI): A security interest in equipment obtained by the supplier of the equipment that directly finances the purchase price; or a security interest taken by a third party lender providing funds to be used to purchase the equipment.

Corporation Service Company (CSC) provided information in this summary.

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