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Article 9 - Where to File Termination Statements for Pre-Effective Date Filings

by

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As a result of the transition of Article 9 filings in Pennsylvania from a dual filing state (that is filing with the Corporation Bureau and Prothonotary) to a single filing state effective July 1, 2001, (that is filing only with the Corporation Bureau) there continues to exist significant confusion concerning the filing of amendments, and especially termination statements, after July 1, 2001 when those amendments and/or termination statements apply to financing statements filed prior to the effective date of the Act, i.e., July 1, 2001.

The short answer is that after July 1, 2001, Prothonotaries are not empowered to accept any filings under the Uniform Commercial Code, whether they be for new financing statements, amendments or terminations.

In part, this arises from the designation of the "filing office" under Section 9-501 of the revisions to Article 9. The sole office designated for any filing is the Office of the Secretary of the Commonwealth (i.e., the Corporation Bureau) (except for so-called real estate related financing statements which involve fixtures, certain crops and timber which would be filed in the Recorder of Deeds office).

This simple explanation has proved to be difficult for attorneys and paralegals to accept. Revised Section 9-707(e)(2) was specifically added as a Pennsylvania non-conforming measure to the Official Text of the revisions to Article 9. Section 707 is a part of the transition rules. Section 9-707 deals with the ways in which a financing statement filed before the effective date of revised Article 9 may be amended (the term "amended" includes termination) after the effective date of July 1, 2001. This provision was added as a very late amendment to the Official Text of revised Article 9, since the Official Text could have been interpreted to require a Pennsylvania Prothonotary, after the effective date, to accept a termination filing relating to a pre-effective date financing statement on file with the Prothonotary.

It is clear, however, that a prothonotary, even before this revision would not have been empowered to accept amendments of any type. Section 9-707, in the Official Text revisions, had the effect of providing that local filing officers, such as Pennsylvania Prothonotaries, would not be empowered to accept any amendments of any nature after the effective date, i.e., July 1, 2001.

The comments prepared by the Article 9 Task Force of the Business Law Section of the Pennsylvania Bar Association, in their recommendations to the General Assembly, specifically state that it would be wiser, as a policy matter, for revised Article 9 to "make a clean break" with the prior dual filing system and that Prothonotaries must cease to accept any further Article 9 filings after the effective date. Therefore, Pennsylvania has a non-uniform revised Section 9-707(e)(2) and a non-uniform revised Section 9-710 to implement those particular provisions. Section 9-707(e)(2), while stated in the negative, essentially provides that a pre-effective date financing statement filed in a County Prothonotary is terminated by filing in the office in which the pre-effective date statement was filed, i.e., the Corporation Bureau. Section 9-710 defines the limited operations available for Prothonotaries after the effective date. Section 9-710(b) provides as follows:

"No records to be accepted after June 30, 2001 - a Prothonotary's Office must not accept for filing a record presented after June 30, 2001 whether or not the record relates to a financing statement filed in the Prothonotary's Office before July 1, 2001."

In conclusion, the report on the Uniform Commercial Code Modernization Act of 2001, which was a part of the enactment process of Senate Bill 330, which became Act 18 of 2001, as prepared by Article 9 Task Force of the Business Law Section of the Pennsylvania Bar Association states, as to transition rules for Prothonotary's Offices:

"Under the Act, from and after the effective date of revised Article 9 (that is July 1, 2001), Prothonotary's Offices in Pennsylvania may not accept further filings under the UCC: They will no longer serve as filing offices for new financing statements, and they may not accept any further filings (such as amendments and termination statements) with respect to pre-effective date filings."

As further evidence of the correctness of these conclusions, if necessary, it should be pointed out that the rules and regulations of the Department of State, in revising 19 Pa. Code 3.30, have eliminated filing fees payable to the Prothonotary. The only filing fees remaining are filing fees payable to the Department of State, i.e., the Corporation Bureau, and financing statements to be filed with the Recorder of Deeds for the so-called fixture filings.

When a termination statement is now filed with the Secretary of the Commonwealth to terminate an existing, pre-effective date, filing, it causes the record of that perfection to be completely terminated. No Prothonotary filing is possible or necessary.

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