

DO I REALLY HAVE TO FILE A TERMINATION STATEMENT?

Am I required to file a UCC-3 termination when the loan is paid off, or can I just leave the UCC filing on the record until it lapses?

For better or worse, the short answer is “it depends”. In most cases, the secured party is not obligated to file a termination statement at the time a loan is paid off, unless the financing statement covers consumer goods. Article 9 addresses the issues in section 9-513. The official comments to section 9-513 provide some good insight into the policy considerations involved.

Because most financing statements expire in five years unless a continuation statement is filed, no compulsion is placed on the secured party to file a termination statement unless demanded by the debtor, except in the case of consumer goods. Because many consumers will not realize the importance to them of clearing the public record, an affirmative duty is put on the secured party in that case.

If the financing statement covers consumer goods, the secured party of record is required to file a termination statement “within one month after there is no obligation secured by the collateral covered by the financing statement”. There are only two States that are exceptions to this rule. In Maine, the secured party is given 60 days to file the termination, and in Nebraska, the secured party is not required to file a termination statement at all.

Of course, the majority of UCC filings do not cover consumer goods. The majority of filed financing statements cover collateral other than consumer goods. If the financing statement covers collateral other than consumer goods, the secured party is not required to file a termination upon payoff at all. There are two states that are exceptions to the rule. In Georgia, the secured party is required to file a termination statement within 90 days of payoff, and in North Dakota, the secured party must do so within 60 days.



It is important to keep in mind that while a secured party is generally not required to file a termination statement upon payoff, an obligation does arise when the secured party receives a demand from the debtor. Most debtors have ongoing needs for financing, and as a result, Article 9 provides debtors with a mechanism to compel secured parties to act. When a secured party “receives an authenticated demand from a debtor”, it is obligated to take certain actions to terminate the UCC filing.

Upon demand from the debtor, if the financing statement covers consumer goods, the secured party must file a termination statement within 20 days of receipt of the demand. North Dakota is the only exception to this rule. In North Dakota, the action must be taken within 10 days. When a financing statement covers collateral other than consumer goods, the secured party has two options. The first option is to file a termination statement within 20 days. The second option is to send a termination statement to the debtor (presumably so the debtor can file the termination statement itself) within 20 days.

The only State that adopted a non-uniform version of this section is North Dakota. In North Dakota, the secured party has no obligation to file a termination statement upon demand from the debtor when the financing statement covers collateral other than consumer goods.

What happens if a secured party fails to comply with the requirements of Section 9-513? While penalties may vary amongst states, the model act provides that a debtor may recover \$500 in each case from a secured party that does not file or send a termination statement as required by section 9-513.



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