

Post-Filing Changes Under Article 9



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New Debtor:

Section 102 of Article 9 defines a “new debtor” as person that becomes bound as debtor by a security agreement previously entered into by another person. Section 9-203 provides further details regarding the treatment of new debtors.

While it is not possible to define every circumstance that could result in a “new debtor”, below are some of the more common examples:

- Transfers of collateral or assumptions of existing security agreement
- Debtor is merged into a new or existing entity
- Debtor’s assets are acquired by a new debtor

ACTION TO TAKE:

The current UCC-1 collateral description contains only collateral that existed at the time of filing and does not include any after-acquired collateral:

- If the new debtor is in the *same jurisdiction* as the original debtor, no action is required other than maintaining the existing filings and filing continuations as needed.
- If the new debtor is in the *same jurisdiction* as the original debtor and the new debtor’s name is different than the original debtor’s name, continue to maintain the existing filing and file continuations as needed.
- If the new debtor is in a *different jurisdiction* than the original debtor, the secured party has one year to file a new UCC-1 against the new debtor in the new jurisdiction. Once this occurs, there is no need to continue the existing filing or take any further action on it. However, keep a file-stamped copy of the filing in your records. Many secured parties will attach a copy of the original filing to the new UCC-1 filing at the time it is filed.

The current UCC-1 collateral description contains after-acquired property, accounts, inventory, etc.:

- If the new debtor is in the *same jurisdiction* and the new debtor’s name is different than the original debtor’s name, file a UCC-1 against the new debtor within four months (9-508). Continue to maintain the original filing and file continuations as needed.
- If the new debtor is in a *different jurisdiction*, file a new UCC-1 within 4 months (9-316). There is no need to maintain or continue the original filing, but keep a file-stamped copy for your records. Many secured parties will attach a copy of the original filing to the new UCC-1 filing at the time it is filed.

Warning!

If a prior secured party has already filed a financing statement against the after-acquired collateral of the new debtor (in the new debtor’s location), it will have priority over the collateral even if the secured party takes all necessary steps to maintain perfection.

Debtor Name Change:

Examples:

- Entity amends name on charter document
- Partnership amends name on partnership agreement
- Marriage/divorce of individual
- Drivers License changes individual name format

After-Acquired Collateral

- **Current UCC-1 collateral description:** also contains after-acquired collateral, inventory, accounts, etc.
- **ACTION TO TAKE:** File UCC-3 Amendment to change debtor name within 4 months of the name change. If an amendment is not filed, the secured party will not be perfected against any collateral acquired by debtor 4 months after the name change. (9-507)(c)(2).
- **What do I need to do with my current filing?** Continue to maintain it and file continuations as needed

Existing Collateral

- **Current UCC-1 collateral description:** contains only collateral that existed at the time of filing.
- **ACTION TO TAKE:** None required. Subsequent searchers must search both the old and new debtor names. (9-507). Many secured parties choose to amend the debtor name but it is not required.
- **What do I need to do with my current filing?** Continue to maintain it and file continuations as needed.

Change of Location:

Within the framework of Article 9, a change of location occurs when a debtor moves. As a practical matter, if a debtor moves to a new location within the State in which it is currently located, it is not a change of location. If a debtor moves to different State, it is considered a change of location.

Examples:

- Individual changes their primary residence
- A non-registered organization changes the location of its chief executive office

A registered organization is deemed to be located in its jurisdiction of formation, therefore the business laws of the relevant states involved must be reviewed to determine if the debtor's move is considered to be a change of location, or if the move results in the debtor being considered a "new debtor" under 9-203.

Current UCC-1 Collateral Description: The same rules apply whether the collateral description includes collateral that existed at the time of filing or after-acquired collateral (or both).

ACTION TO TAKE: File a new UCC-1 financing statement in the new location within four months of the move. (9-316). Please note that once the four month window has passed, the security interest is deemed to have never existed.

What do I need to do with my current filing? There is no need to take any further action or file continuations. However, be sure to keep a file-stamped copy of the filing. Some secured parties will attach a copy of the original filing to the new filing.

Sale of Existing Collateral:

If a debtor sells collateral to another party, without first obtaining consent from the secured party to do so, the secured party retains its perfected security interest in the collateral. The general policy is that the buyer is obligated to take the necessary steps (for example, performing a UCC search) to determine ownership of the goods and uncover any existing security interests prior to purchasing the collateral.

Please note that this analysis does not include transactions involving a *buyer in the ordinary course of business*.

ACTION TO TAKE:

Existing Filing If the Buyer is in the *Same Location* (State) as the Debtor: Continue to maintain the existing filing and file continuations as needed. No additional action is required.

Existing Filing If the Buyer is in the *Different Location* (State) as the Debtor: File a UCC-1 against the buyer in its location within one year after the sale (9-316). There is no need to maintain or continue the original filing once this occurs. However, keep a file-stamped copy of the filing in your records. Many secured parties will attach a copy of the original filing to the new UCC-1 filing at the time it is filed.

In order to put other creditors on notice and to receive inquiries/notices from other parties, some secured parties choose to file against the buyer. In such a case, the secured party does not need to obtain any additional authorization from the buyer (it exists via 9-509). The correct method for doing this is to file a UCC-1 against the buyer, rather than filing a UCC-3 amendment to add the name to an existing filing.