

LOUISIANA - A UNIQUE APPROACH TO ARTICLE 9

UNIQUE: BEING THE ONLY ONE OF A PARTICULAR TYPE; VERY REMARKABLE OR UNUSUAL; HAVING NO LIKE OR EQUAL.

There is no doubt that Louisiana fits the definition of “unique”. The people, the food, the culture, the music – everything about Louisiana is truly one of a kind! Therefore, it is not surprising that Louisiana’s approach to Article 9 of the UCC is also unique.

While the rest of the United States follows the system of English common law, Louisiana is the only State whose legal system was based upon Napoleonic law. When Louisiana adopted its version of Article 9, it included some significant non-uniform provisions that were consistent with its historic approach to commercial law.

One interesting practice is that Louisiana generally does not use the terms “personal property” and “real property”. Instead, the terms “movable property” and “immovable property” are used. This article will discuss several of these non-uniform provisions, specifically those relating the filing of UCC financing statements and searching the UCC records.

CENTRAL FILING OFFICE (SORT OF)

Unlike most states, there is no central filing office for filing financing statements or performing searches of the UCC records. The Louisiana Secretary of State performs neither of these functions.

In Louisiana, a financing statement may be filed in the records of the Clerk of Court in any Parish (with the exception of Orleans Parish, where such records are filed with the Recorder of Mortgages). However, to simplify this process, the Secretary of State maintains a centralized computer index that links to each parish. The centralized index allows for the searching and filing of all UCC records in a single location.



A financing statement may be filed in any Parish, without regard to the location of the debtor or the collateral. One important caveat is that any UCC-3 amendment filing must be filed in the same Parish filing office as the initial financing statement to which it relates is filed.

FIXTURE FILINGS DEFINED

Louisiana's definition of a "fixture filing" varies substantially from the model act definition. In Louisiana, a security interest cannot be created in goods that have already become fixtures.

In every state but Louisiana, Article 9 defines a "fixture filing" as:

- *The filing of a financing statement covering goods that are or are to become fixtures and satisfying Section 9-502(a) and (b). The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.*

Louisiana's definition is:

- *The filing of a financing statement covering goods, other than consumer goods and manufactured homes, that are to become fixtures and satisfying R.S. 10:9-502(a) and (b), made before the goods become fixtures.*

Therefore, in every state except Louisiana, a fixture filing can relate to goods that have already become fixtures in the associated real property. In Louisiana, a fixture filing must be made prior to the goods becoming fixtures in the real property. Once the fixtures have become component parts of the real property, it is too late to file a fixture filing.

This non-uniform approach to filing also impacts the indexing of fixture filings. In Louisiana, fixture filings are filed in the regular UCC records, not the real property records! Unlike other states, where a secured party may be required to file two separate UCC filings (one at the central filing office to cover personal property, and one in the real estate records at the local filing office), one UCC filing will be effective to cover both regular collateral as well as fixtures.

It is important to note that the financing statement must still comply with section 9-502 regarding the sufficiency of the financing statement, and still contain the appropriate real property description and information relating to the real property interests.



WRONGFUL REJECTION BY A FILING OFFICE

Louisiana deviates from the model act in its approach to UCC filings that are wrongfully rejected by a filing office.

Section 9-516(d) of the model act provides:

- *“A record that is communicated to the filing office with tender of the filing fee, but which the filing office refuses to accept for a reason other than one set forth in subsection (b), is effective as a filed record except as against a purchaser of the collateral which gives value in reasonable reliance upon the absence of the record from the files.”*

This section was designed to protect a party filing a financing statement that fully complied with the requirements of the statute, but whose filing was nonetheless rejected by a filing office.

Louisiana omitted section 9-516(d). As a result, a filer receiving notice of a rejected filing (wrongfully rejected or not) should take steps to remedy the filing and ensure it is properly indexed by the filing office. In addition, it is advisable to perform a search to reflect in Louisiana to ensure your filing was duly accepted and indexed appropriately.



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