

INDIANA NOTIFICATIONS

The State of Indiana has an interesting filing requirement that is designed to help keep debtors better informed. In the majority of secured transactions, at the time the security agreement is signed by the parties, it is standard practice for the secured party to disclose to the debtor that a financing statement will be filed in relation to the transaction. However, Indiana takes it a step further, and requires the secured party to send a copy of the actual financing statement to the debtor. The lender is required to send a copy of the financing statement to the debtor within 30 days of the date the financing statement is filed.

In practice, most lenders make this a part of the filing process. Since most debtors aren't familiar with the UCC filing process, while it is only required that the lender send a copy of the financing statement, most choose to send a letter explaining the requirement and attach a copy of the financing statement to the letter.

Many service companies will provide a debtor notification letter on your behalf as part of the filing process, although you should be wary of any service companies that charge you additional fees for doing so. At Do Diligence, we will prepare and send a notification letter to the debtor at no additional charge as part of our standard filing service.

INDIANA DEBTOR NOTIFICATION FAQs

There are four questions we are frequently asked about the Indiana Debtor Notification process:

1. *Do I need to wait until the UCC filing has been filed and indexed, in order to show the file date and file number, prior to sending a copy of the filing to the debtor?*

The answer is no. The secured party is only required to send a copy of the financing statement to the debtor, and there is no statutory requirement that the copy contain the filing date or file number. Most lenders will send a copy of the filing prior to submitting it to the filing office.



2. *Does the rule only apply to financing statements filed at the Secretary of State's office, or does it apply to UCC fixture filings that are made at the county filing office?*

The rule applies to "financing statements". Since fixture filings are a type of financing statement, it would include UCC fixture filings that are filed at the local filing office (in Indiana, fixture filings are filed at the County Recorder's office).

3. *Does the requirement to notify the debtor also apply to UCC-3 amendment filings, or is it limited to the filing of the initial UCC-1 filing?*

Section 26-1-9.1-102((39) defines a financing statement as the "record or records composed of an initial financing statement and any filed record relating to the initial financing statement". A UCC-3 amendment is clearly a filed record that relates to the initial financing statement. Therefore, the safest course of action for lender is to send the notification letter and a copy of each UCC-3 amendment that is filed.

4. *What are the consequences if a lender does not send a copy of the financing statement to a debtor within 30 days after the date the financing statement is filed?*

There is a statutory penalty of \$500 for failure to comply. 9-502(f): Not later than thirty (30) days after the date the financing statement is filed, the secured party that files the financing statement shall furnish a copy of the financing statement to the debtor. The secured party has the burden of establishing compliance with this subsection. The failure of the secured party to comply with this subsection does not affect the sufficiency or effectiveness of the financing statement. A person who fails to comply with this subsection is subject to IC26-1-9.1-625.

9-625(e): In addition to any damages recoverable under subsection (b), the debtor, consumer obligor, or person named as a debtor in a filed record, as applicable, may recover five hundred dollars (\$500) in each case from a person that: (7) fails to comply with IC 26-1-9.1-502(f) .



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