ARE YOUR SEARCH RESULTS PUTTING YOUR DEAL AT RISK?

There are many things to love about Article 9 of the Uniform Commercial Code and it is considered by many to be one of the most clear and well-written statutes in existence! Article 9 of the UCC governs secured transactions and regulates the creation and enforcement of security interests. One of its most important functions is providing the framework for secured lenders to file and search UCC records.

The purpose of conducting a UCC search is to identify secured creditors, determine which assets are subject to an existing lien, and to understand the relative priorities amongst competing creditors. A UCC search is not a credit report or a Google search that is designed to find as many results as possible.

Bankruptcy trustees are not looking at credit scores to determine which party has first priority over the debtor's assets - they are searching the UCC records.

There are four critical components to conducting a legally-compliant UCC search:

1. The searcher must conduct the search using the correct debtor name. No manipulation of the debtor's name is acceptable.
2. The search must be conducted using the filing office's computer search logic (most filing offices use a search logic that varies from the "model" search logic).
3. The search must be conducted using the filing office's UCC database.
4. The through-date of your search must precisely match the through-date of the filing office's records.

USING A THIRD-PARTY'S PRIVATE UCC DATABASE IS A RISK YOU SHOULD NEVER TAKE

Using these systems is not worth the cost of losing perfection and priority, or worse yet, the cost of a malpractice lawsuit! If you want to stay out of court, it is best to avoid using third-party UCC search systems.

You may be thinking that using a private UCC database to search for UCC filings makes sense. Service companies will tell you that by using their private UCC databases, you will find more UCC filings. This is great news for them, as they can purchase UCC records for pennies and then charge you $2 or more per page for the copies! They may even tell you their system uses the Article 9 "model" search logic when it conducts a UCC search. What could possibly be wrong with that?

The problem is that Article 9 of the Uniform Commercial Code specifically prohibits searching a database other than the official database of the filing office. Article 9 also provides that a search is only legally sufficient if it is conducted using the specific filing office's computer search logic, which more often than not varies significantly from the model search logic employed by most third-party UCC searching systems.

The official comment to Section 9-506 provides:
A financing statement that is seriously misleading under this section is ineffective even if it is disclosed by (i) using a search logic other than that of the filing office to search the official records, or (ii) using the filing office's standard search logic to search a data base other than that of the filing office.

In addition, many of these private UCC databases are populated by service companies that purchase "bulk" UCC records from the filing offices. This is a BIG problem for the searcher, as these records are nearly always days, weeks, or even months behind the records in the actual filing office's database! That is why it is vitally important for you check the through-date when conducting a search. There is no room for error when you are trying to protect the priority date of your filing. If a private UCC database is showing a through-date that is older than the through-date for searches conducted at the actual filing office, your search results are insufficient, and there is a very good chance you will miss an intervening lien!

READ YOUR UCC SEARCH REPORTS CAREFULLY!

If your report has hidden disclaimers telling you that the service company used a private database or other third-party system to conduct your UCC search, you are putting your transaction at risk.

At Do Diligence, LLC we always conduct UCC searches using the official state search logic, the filing office's official database, and the most current through-date available, as explicitly required by Article 9 of the Uniform Commercial Code.

DO DILIGENCE, LLC
PUBLIC RECORDS SIMPLIFIED

Do Diligence, LLC, is the only national service company dedicated exclusively to providing legal due diligence services to law firms. We'd love to hear from you! If you have any questions about this article, please contact us at ILoveUCC@ddsimplified.com or visit our website at www.ddsimplified.com.