

## UCC Financing Statements Preparation and Filing Checklist USA (National/Federal)

### Related Content

*This is a Checklist of issues to consider when preparing and filing a UCC-1 financing statement (UCC-1) and a UCC-3 financing statement (UCC-3). It is relevant for the 05/22/02 versions of UCC-1 and UCC-3.*

Under the [Uniform Commercial Code](#) (UCC), a [security interest](#) in most kinds of personal property can be [perfected](#) by filing a [UCC-1 financing statement](#) (UCC-1). For a discussion on [attachment](#) and perfection of security interests, see [Practice Note, UCC Creation, Perfection, and Priority of Security Interests](#) and [Perfection Steps Checklist](#).

Once a UCC-1 has been filed, it can be amended, continued, assigned and terminated by filing a UCC-3 financing statement (UCC-3). For more information about filing UCC-1s and UCC-3s, see [Practice Note, UCC: Preparing and Filing Financing Statements](#). For more information about searching UCC-1s and UCC-3s, see [Practice Note, UCC: Conducting and Reviewing UCC Searches](#).

This Checklist is based on the New York UCC. New York enacted its version of the 2010 amendments to UCC Article 9 (2010 Amendments) on December 17, 2014 (see [Practice Notes, Proposed 2010 Amendments to UCC Article 9](#) and [Proposed 2010 Amendments to UCC Article 9: State-by-state Adoption](#)). This Checklist is based on the 05/22/02 versions of UCC-1 and UCC-3 (which are still in use in New York) and not on the UCC-1 and UCC-3 forms that were revised in connection with the 2010 Amendments (see [Practice Note, Effect of the 2010 UCC Amendments on Loan Documents](#) and [UCC Financing Statements \(04/20/11 Versions\) Preparation and Filing Checklist](#)).

## UCC-1 Financing Statements

### Taking a Security Interest

When a lender enters into a lending transaction with a borrower, it and its counsel typically do extensive due diligence as part of the transaction. Part of the diligence involves investigations concerning the security interest to be provided by the borrower (debtor) over its assets in favor of the lender (secured party). Before the secured party's counsel can prepare a UCC-1, it should ensure that the necessary elements for a security interest are satisfied and that it has all necessary information to complete and file the UCC-1. Some of the issues considered as part of this due diligence are discussed below.

- Who is the debtor? Find out the debtor's full legal name, address and the other details required to complete the UCC-1 (see [Preparing UCC-1 Financing Statements](#)).
- Who is the secured party? Find out the secured party's full legal name and address (see [Preparing UCC-1 Financing Statements](#)).
- Has the debtor signed a security agreement in favor of the secured party satisfying the requirements for attachment of a security interest? For a discussion of attachment and the requirements that must be satisfied, see [Practice Note, UCC Creation, Perfection, and Priority of Security Interests: Creation and Attachment of a Security Interest](#) and [Perfection Steps Checklist](#).
- Is the debtor providing security for its own obligations or those of another entity? If the debtor is an organization, does it have the capacity under its organizational documents to grant a security interest in respect of its own obligations or obligations incurred by others (if relevant) or both?

Checking the debtor's capacity is part of the due diligence that counsel conducts in connection with loan transactions. For more information on loan transaction and opinion due diligence, see [Practice Note, Due Diligence: Lending](#) and [Legal Opinion Due Diligence Checklist](#).

- What is the collateral in the security agreement? The collateral description should be clear in the security agreement between the debtor and the secured party. Is the secured party taking a security interest over all the assets of the debtor, or only over specific assets? In either case, what are those assets? Counsel typically does not get involved with investigating if either:
  - Certain assets exist.
  - Debtor has title to them.

However, counsel may be asked to determine the debtor's major assets and where they are located.

Will any assets be excluded from the collateral package? For more information on this issue, see the discussion on excluded property in [Standard Document, Security Agreement: 1.1. Definitions](#).

- Does the secured party's counsel have all the information it needs about the debtor's assets to enable the secured party to obtain a perfected security interest in them? The debtor can provide this information in a [perfection certificate](#) (see [Standard Document, Perfection Certificate](#)).
- Will the security interest cause any issues under any existing agreements of the debtor? As part of the due diligence, the secured party may also ask counsel to check whether the grant of security interest breaches certain material agreements of the debtor or requires the consent of any third party. Counsel should also consider whether enforcement by the secured party of its security interest will create any issues, such as restrictions on the transfer of the assets to a purchaser. For more information on loan transaction and opinion due diligence, see [Practice Note, Due Diligence: Lending](#) and [Legal Opinion Due Diligence Checklist](#).
- Are there any existing UCC-1s filed in respect of the assets being pledged? To find out, counsel should conduct UCC searches (see [Practice Note, UCC: Conducting and Reviewing UCC Searches](#)). If there is an existing UCC-1 filed, will it be released before the new security is taken? If so, will there be a payoff letter and UCC-3 from the existing secured party? For more information about releasing security interests, see [Practice Note, Security and Guaranties: Release](#).

If the existing UCC-1 is not being released, will consent be required from the existing secured party for creation of the new security interest? Will an intercreditor agreement be required between the secured parties to provide for their priorities? For more information about intercreditor agreements, see [Practice Note, Intercreditor Agreement Between First and Second Lien Lenders: Overview](#).

- How will the security interest in the debtor's assets be perfected? A security interest in most kinds of assets can be perfected by filing a UCC-1. For more information on perfection, see [Perfection Steps Checklist](#).

Assets including fixtures, as-extracted collateral (such as oil, gas and other minerals), timber to be cut and cooperative interests can also be perfected by filing. These real property-related filings carry additional filing requirements (including contents and locations of filings) in the UCC ([NY UCC § 9-502\(b\)](#)) and are beyond the scope of this Checklist. This Checklist also does not discuss purchase money security interests and filings against debtors that are transmitting utilities.

- Has the debtor authorized the filing of the UCC-1 in an authenticated record? A signed security agreement covering the same collateral as the UCC-1 will satisfy this requirement. For more information on authorization, see [Practice Note, UCC: Preparing and Filing Financing Statements: Who Can File Financing Statements](#).
- Will the UCC-1 be filed before, on or after closing? For more information on timing, see [Practice Note, UCC: Preparing and Filing Financing Statements: Who Can File Financing Statements](#) and [How to File Financing Statements](#).

These are some of the issues counsel should consider as part of its due diligence before preparing a UCC-1. For a more detailed discussion of due diligence, see [Practice Notes, Due Diligence: Lending](#) and [Closing a Loan Transaction](#).

## Preparing UCC-1 Financing Statements

Ensuring that the UCC-1 financing statements are properly prepared is an important role of counsel in connection with a secured financing transaction. Because of the serious consequences of any error, many law firms require a second review of UCC-1s and UCC-3s before they are submitted for filing.

Many states have non-uniform filing requirements based on their UCC and their filing office administrative rules. When preparing a UCC-1, counsel should do the following:

- Ensure that the correct form of UCC-1 is used for the state in which the UCC-1s are to be filed. In many states [UCC Section 9-521](#) incorporates safe harbor UCC forms. Filing offices can accept other forms (including state-specific forms), but [Section 9-521](#) was intended to provide a form of nationally recognized financing statement. In 2002 the International Association of Commercial Administrators (IACA) modified the safe harbor forms and approved forms for use in all states. The UCC forms currently in use in some states include:
  - UCC Financing Statement dated 05/22/02 (Form UCC1);
  - UCC Financing Statement Amendment dated 05/22/02 (Form UCC3);
  - UCC Financing Statement Addendum dated 05/21/09 (Form UCC1Ad) or UCC Financing Statement Amendment Addendum dated 07/29/98 (Form UCC3Ad), as appropriate, if additional space is needed to complete Form UCC1 or UCC3; and
  - UCC Financing Statement Additional Party dated 05/22/02 (Form UCC1AP) or UCC Financing Statement Amendment Additional Party dated 05/22/02 (Form UCC3AP), as appropriate, if there are additional parties.

For more information on different forms, see [Practice Note, UCC: Preparing and Filing Financing Statements: UCC Forms](#). This section of the Checklist is based on Form UCC1 dated 05/22/02.

Please check with the appropriate state's UCC and central filing office for the appropriate version of UCC-1 to use. This Form UCC1 may not be accepted by some filing offices. For example, after July 1, 2013 some central filing offices may only accept the new 04/20/11 version of UCC-1.

- When completing the form, type all information. If an online form is completed, information can be entered electronically into the data fields.
- Enter contact information in block A. This will assist the filing office if the filer needs to be contacted. If counsel is using a service agent, the service agent will typically complete the filer contact information with their information. The financing statement will be accepted for filing without this information.
- Enter information in block B so that the filing office can send the filer an acknowledgment of the filing. An acknowledgment is not required; the financing statement will be accepted for filing without this information.
- Enter the debtor's name in block 1a or 1b, but not in both. Ensuring that the debtor's name is correct on the UCC-1 is one of the most important tasks of counsel in a financing transaction. If the debtor's name is incorrect on the UCC-1, then the UCC-1 may be ineffective and it may not be revealed in a filing office search. For a discussion of issues related to the debtor's incorrect name, see [Practice Note, UCC: Preparing and Filing Financing Statements: Issues with Debtor Names](#).

For debtors that are registered organizations, counsel should note the following:

- Refer to the public organic records of the registered organization (for example, their certified charter) in their jurisdiction of organization to obtain their full legal name.
- Do not use a good standing certificate to obtain the debtor's name.
- Do not use any trade names.
- Be careful with the location of periods, case, prefixes and suffixes and spelling.
- Do not refer to the debtor by its name and then add superfluous information in the debtor's name block, such as "a Delaware corporation."
- For organizations without a name, the financing statements should name the individuals or other entities that comprise the organization.

For debtors that are individuals, counsel should note the following:

- Use the person's full name as found on their unexpired driver's license or non-driver photo identification card most recently issued by the state where the debtor resides. If the debtor does not have a driver's license or card meeting these criteria, then the financing statement must provide either the individual name of the debtor or the surname and first personal name of the debtor. If there is any uncertainty about the debtor's name, commentators have suggested using the debtor's name as it appears on the debtor's driver's license and, in addition, putting the debtor's surname and first personal name as an additional debtor.
- Avoid any nicknames or name abbreviations.
- Do not use any prefixes (for example, Mrs.) or suffixes with an individual's name, except for notations of lineage (for example, Jr., III).

The debtor's name should only go into the debtor's name field, and not in any other field. The debtor's name should not be listed **only** on an attachment to the financing statement. If there are several additional debtors, the UCC1 instructions encourage the use of either Form UCC1Ad or

Form UCC1AP. These pages should be used to allow the additional debtors to be listed in the correct field in the same format as on the UCC-1.

The information in this block is also used to indicate whether the debtor is an individual or an organization, which is required by [NY UCC Section 9-516\(b\)\(5\)\(B\)](#).

For more information on debtors' names in UCC-1s, see [Practice Note, UCC: Preparing and Filing Financing Statements: Debtor's Name & Address](#).

- Ensure that all of the address boxes are completed. Each debtor should have a corresponding mailing address. That information should be entered in block 1c.
- Provide the employer identification number or social security number, only if required. A state may require the information in block 1d to be completed with the social security number for an individual or the employer identification number for an organization. In other states, this information is optional or will be redacted if included or the states may reject the UCC-1 if it is included. In New York, the department of state instructs filers not to include social security numbers.
- If the debtor is an organization, complete blocks 1e and 1f with the debtor's type of organization and jurisdiction of organization. This information may be found on the certified charter of the debtor, which is typically obtained in connection with a financing transaction. Insert the debtor's organizational ID# in block 1g, if applicable, or check the "none" box.
- If the debtor is a trust or a trustee acting with respect to property held in trust, then:
  - see [Practice Note, UCC: Preparing and Filing Financing Statements: Trusts and Estates as Debtors](#) for information on completing the debtor's name in block 1; and
  - attach Form UCC1Ad with the appropriate box checked in block 17.

If the debtor is a decedent's estate, then enter the deceased's name in block 1b and attach Form UCC1Ad with the appropriate box checked in block 17.

For more information about debtors that involve trusts or decedent's estates, see [Practice Note, UCC: Preparing and Filing Financing Statements](#).

- Enter any additional debtor's name in block 2a or 2b, but not both. If more space is required for additional debtor names, use Form UCC1AP or Form UCC1Ad and list names in the same format as on the UCC-1. All the information relating to the additional debtor must be completed, otherwise the financing statement may be rejected.
- Enter the secured party's name in block 3a or 3b, but not in both. If more space is required for additional secured party names, the UCC1 instructions encourage the use of either Form UCC1Ad or Form UCC1AP. The names should be listed in the same format as on the UCC-1.

If there are multiple secured parties, then consider whether to list all of them or a representative of the secured parties. In many transactions, the secured parties appoint an administrative agent or collateral agent to act on their behalf. For more information on issues with the secured party's name, see [Practice Note, UCC: Preparing and Filing Financing Statements: Secured Party's Name & Address](#).

- Ensure that all of the address boxes are completed for the secured party. Each secured party should have a corresponding mailing address.
- Enter a description of the collateral in block 4.

If there is insufficient space in block 4, reference can be made in block 4 to an attachment. Form UCC1Ad can be used for this purpose. If counsel are using their own form of attachment, the debtor's name should be included in the attachment footer for identification purposes. Counsel may either:

- refer to the attachment in block 4 ("See attachment X") and note the entire collateral description on the attachment; or
- start the collateral description on the UCC-1 (by describing the main assets) and then note "as further described on attachment X" and continue the description on the attachment. This approach may be preferred in case the attachment is accidentally separated from the UCC-1.

The collateral description should match the description of collateral in the security agreement. If the collateral is very specific, it is not unusual to find a collateral description taken verbatim from the security agreement. A generic description of collateral can be used for the UCC-1 if that is the business deal between the parties, and a common collateral description on a UCC-1 is: "All assets of the debtor now owned or hereafter acquired."

For information on issues with the collateral description, see [Practice Note, UCC: Preparing and Filing Financing Statements: Description of Collateral](#).

- Consider whether to complete optional block 5. It can be used to indicate, for example, that the filing relates to an agricultural lien, a tax lien or a judgment lien.
- Check block 6 only if the UCC-1 is to be filed in the real estate records. This would be the case if it is a fixture filing or if the collateral consists of timber to be cut or as-extracted collateral. These filings may require additional information and attachments, and are not discussed further in this Checklist.
- Check block 7 only if the filer wants to request a search report on the debtor named in the financing statement. This form of request will not work for all states and some states require a separate search request form. For more information on searches, see [Practice Note, UCC: Conducting and Reviewing UCC Searches](#).
- Consider whether to complete optional block 8. Counsel may choose to enter useful identifying information (such as the loan or file number) or the location of the filing jurisdiction (for example, Delaware SoS).

## Filing UCC-1 Financing Statements

Counsel should consider the following in connection with filing UCC-1s:

- Establish the state where the UCC-1s will be filed. For more information on where to file, see [Practice Note, UCC: Preparing and Filing Financing Statements: Where To File Financing Statements](#).
- Arrange for the UCC-1s to be filed before, on or after closing, as determined by the secured party. For more information on timing of filings, see [Practice Note, UCC: Preparing and Filing Financing Statements: Who Can File Financing Statements](#) and [How to File Financing Statements](#).
- Ensure that the correct method of filing is used (such as electronic filing), and the correct filing fee is paid for the state in which the UCC-1s are to be filed. Secured parties and counsel have minimized rejections by relying on independent search and filing companies to check and submit the filings. It is advisable early in a transaction to check with a service agent about the timing and costs of filing and whether there are any particular filing requirements in the relevant jurisdictions. For more information on communication of filings, see [Practice Note, UCC: Preparing and Filing Financing Statements: How to File Financing Statements](#).
- Ensure that records are kept of all filings that are made (see [Practice Note, UCC: Preparing and Filing Financing Statements: Acknowledgments and Filing Charts](#)). This will help to ensure that UCC-3 continuations are filed on time by the secured party. It will also facilitate any necessary changes to the filings (see [Practice Note, UCC: Preparing and Filing Financing Statements: Post-filing Changes](#)).

## UCC-3 Financing Statements

UCC-1s are amended, terminated, assigned and continued by filing UCC-3s (see [Standard Document, UCC-3 Financing Statement](#)). UCC-3s are one page documents with optional boxes that can be checked and spaces for information similar to the UCC-1.

States filing offices have their own rules and requirements for filing, which may also affect UCC-3 completion and filing. Some states do not permit multiple transactions, such as an amendment and a continuation, to be actioned using the same UCC-3. These states require only one transaction on each form.

When a UCC-1 is filed, it is stamped with a filing number. All UCC-3s, whether they are amending, continuing or terminating a UCC-1, must include the filing number of the UCC-1 to which they relate.

## Preparing and Filing UCC-3 Financing Statements

This section of the Checklist is based on Form UCC3 dated 05/22/02. The preparation and filing of a UCC-3 is similar to that for a UCC-1 in many ways, and counsel should also consider the UCC-1 issues discussed above in connection with preparing a UCC-3.

Please check with the appropriate state's UCC and central filing office for the appropriate version of UCC-3 to use. This Form UCC3 may not be accepted by some filing offices. For example, after July 1, 2013 some central filing offices may only accept the new 04/20/11 version of UCC-3.

In addition, counsel should consider the following in connection with preparing and filing a UCC-3:

- It is important in a UCC-3 to include the related UCC-1 number in block 1a. The relevant UCC-1 should not have lapsed. Only one file number should be entered in block 1a because an amendment can only relate to one financing statement. If the filer uses a number assigned to a UCC-3 in block 1a rather than the initial UCC-1 financing statement number, the filing will be rejected (see [Practice Note, UCC: Preparing and Filing Financing Statements: Incorrect Information](#)).
- The record date of the related UCC-1 should also be included. Although this is not required by the UCC for most kinds of personal property, this date is required by some jurisdictions when the UCC-1 file number is not unique.
- To terminate the effectiveness of a UCC-1, check box 2. Care should be taken that filers only check this box when they intend to terminate the entire financing statement and the secured party's perfected security interest over all of the collateral. It should not be checked for a partial release of collateral (see [Practice Note, UCC: Preparing and Filing Financing Statements: Checking the Wrong Box](#)).
- To continue the effectiveness of a UCC-1, check box 3. Ensure that the filing is made within the proper continuation timing window. If it is made too early or too late, it will not be effective (see [Practice Note, UCC: Preparing and Filing Financing Statements: Lapses](#)). It would be prudent not to wait until the last day of the window, in case the filing office is closed on that day.
- To effect a full or partial assignment of the secured party's security interest or an assignment of all of its interest in some of the collateral covered by the UCC-1, check box 4. If box 4 is checked, the relevant information in blocks 7 and 9 should also be completed. If the assignment only affects some of the collateral, then the filer should complete the information in block 8 as well.

If the UCC-3 is an assignment, ensure that the correct name and mailing address of the assignee and assignor is used. The assignor must have the same name as the secured party authorizing the UCC-3. Ensure that it is clear whether it is a full or partial assignment and whether it is an assignment of all or some of the collateral.

- Block 5 can be used to change the name or address of a party. The current and amended details go in blocks 6 and 7.

Block 5 can also be used to add a party (by completing the details in block 7) or delete a party (by completing the details in block 6). If the UCC-3 is adding a party, ensure that all of the relevant information for that entity is completed in the UCC-3.

- Block 8 relates to collateral changes. If the space is insufficient, use attachments in the same way as noted above for UCC-1s. A partial release of collateral is a deletion.

If the UCC-3 is adding or deleting collateral, consider whether to describe the collateral being added or deleted or to restate the entire revised collateral description.

- Ensure that there is authorization to file the UCC-3. The UCC-3s need not be signed, but their filing must be authorized by the appropriate party. Details of the authorizing party should be completed in block 9.

The debtor must authorize the filing if the UCC-3 adds collateral or amends the debtor's information. If the UCC-3 is releasing collateral, terminating a filing or amending the secured party's information, the secured party must authorize the filing. For more information on authorization, see [Practice Note, UCC: Preparing and Filing Financing Statements: Who Can File Financing Statements](#). For a discussion of issues involved with unauthorized filings, see [Practice Note, UCC: Conducting and Reviewing UCC Searches: Unauthorized Amendments](#).

## PRODUCTS

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