



KeyCite Yellow Flag - Negative Treatment

Proposed Legislation

West's Tennessee Code Annotated

Title 47. Commercial Instruments and Transactions

Chapter 9. Secured Transactions (Refs & Annos)

Part 5. Filing

Subpart 1. . Filing Office; Contents and Effectiveness of Financing Statement

T. C. A. § **47-9-513**

§ **47-9-513**. Termination statement

Effective: October 1, 2017

[Currentness](#)

(a) **CONSUMER GOODS.** A secured party shall cause the secured party of record for a financing statement to file a termination statement for the financing statement if the financing statement covers consumer goods and:

(1) there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value; or

(2) the debtor did not authorize the filing of the initial financing statement.

(b) **TIME FOR COMPLIANCE WITH SUBSECTION (A).** To comply with subsection (a), a secured party shall cause the secured party of record to file the termination statement:

(1) within one (1) month after there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value; or

(2) if earlier, within twenty (20) days after the secured party receives an authenticated demand from a debtor.

(c) **OTHER COLLATERAL.** In cases not governed by subsection (a), within 20 days after a secured party receives an authenticated demand from a debtor, the secured party shall cause the secured party of record for a financing statement to send to the debtor a termination statement for the financing statement or file the termination statement in the filing office if:

(1) except in the case of a financing statement covering accounts or chattel paper that has been sold or goods that are the subject of a consignment, there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value;

(2) the financing statement covers accounts or chattel paper that has been sold but as to which the account debtor or other person obligated has discharged its obligation;

(3) the financing statement covers goods that were the subject of a consignment to the debtor but are not in the debtor's possession; or

(4) the debtor did not authorize the filing of the initial financing statement.

(d) EFFECT OF FILING TERMINATION STATEMENT.

(1) Except as otherwise provided in § 47-9-510, upon the filing of a termination statement with the filing office, the financing statement to which the termination statement relates ceases to be effective.

(2) Except as otherwise provided in § 47-9-510, for purposes of Sections 47-9-519(g), 47-9-522(a), and 47-9-523(c), the filing with the filing office of a termination statement relating to a financing statement that indicates that the debtor is a transmitting utility also causes the effectiveness of the financing statement to lapse.

(e)(1) As used in this subsection (e), “public official” means:

(A) An individual who is a current or retired elected or appointed government official, including a state, county, metropolitan, or municipal official;

(B) An individual who is the head of a division or major unit or department within an agency or office of the executive, judicial, or legislative branch of state, county, metropolitan, or municipal government, regardless of the title of the position, and who, as a substantial part of the individual's duties, provides meaningful input on the development of policy goals or the implementation of policy;

(C) A high-ranking employee within the executive, judicial, or legislative branch of state, county, metropolitan, or municipal government who has a primary responsibility for one (1) or more of the following functions:

(i) Public information and legislative affairs;

(ii) Fiscal, budget, and audit matters;

(iii) Legal, security, or internal affairs;

(iv) Information technology systems; and

(v) Human resources;

(D) A first responder, as defined in § 29-34-203; or

(E) A law enforcement officer, as defined in § 39-11-106.

(2)(A) A public official who is identified as a debtor in a filed financing statement may file a notarized affidavit, signed under penalty of perjury, which contains:

(i) The Uniform Commercial Code financing statement file number of the financing statement;

(ii) The affiant's mailing address;

(iii) A statement that the affiant is a public official; and

(iv) A statement that the affiant believes that the filed record identifying the affiant as a debtor was filed without any reasonable basis or legal cause, and the affiant's factual basis for why the filed record lacks any reasonable basis or legal cause.

(B) The secretary of state shall adopt a form of affidavit for use under subdivision (e)(2)(A).

(3) Once an affidavit is filed with the filing office pursuant to subdivision (e)(2)(A), the filing office shall indicate on the Uniform Commercial Code financing statement that the underlying financing statement is "Contested--Under Review."

(4)(A) Within three (3) business days of receipt of an affidavit filed pursuant to subdivision (e)(2)(A), the filing office shall send a copy of the affidavit, by registered or certified mail, with return receipt requested, addressed to the secured party of record for the financing statement to which the affidavit relates.

(B) The copy of the affidavit shall be deemed delivered upon:

(i) Acceptance by the addressee;

(ii) A showing that the addressee refused to accept delivery and it is so stated in the return receipt of the United States postal service; or

(iii) The United States postal service returning the affidavit as undeliverable or unclaimed.

(C) The refusal or failure of a secured party to accept delivery of the registered or certified mail, or the refusal or failure to sign the return receipt, shall not affect the validity of delivery of the affidavit, and a secured party who refuses or fails to accept delivery of such registered or certified mail shall be charged with knowledge of the contents of the affidavit.

(D) Once the filing office receives the return receipt, notice of refusal or failure to sign the return receipt, or notice that the affidavit is undeliverable, the twenty (20) business days referenced in subdivision (e)(5) will commence.

(5)(A) Within twenty (20) business days of delivery of the affidavit to the secured party, a secured party who believes in good faith that the filed financing statement was filed with a reasonable basis or legal cause, may file with the filing office a petition for review by an administrative judge pursuant to the contested case procedures of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3.

(B) A petition for review must set forth the factual basis showing that the filed record was filed with a reasonable basis or legal cause, and must be accompanied by a cost bond in the amount of two hundred dollars (\$200), the form of which shall be determined through rule by the secretary of state. The cost bond required pursuant to this subdivision (e)(5)(B) does not apply to any financial institution that is insured by the federal deposit insurance corporation, insured by the national credit union administration, or regulated by the farm credit administration.

(C) Within three (3) business days of receipt of the petition for review and cost bond by the filing office, the filing office shall forward the petition to the administrative procedures division of the office of the secretary of state, along with a request for a hearing.

(D) Within ten (10) business days of receipt of the petition for review from the filing office, an administrative law judge shall notify the parties identified in the petition of the hearing date and location.

(E) The venue for all hearings under this subsection (e) shall be Davidson County.

(F) Should circumstances require such, the administrative law judge may permit all or part of a hearing to be conducted by telephone.

(G) Nothing in this subsection (e) shall be construed as requiring the hearing to take place within the ten (10) business day period described in subdivision (e)(5)(D).

(H) The administrative law judge shall make a determination as to whether the financing statement was filed with any reasonable basis or legal cause and shall issue an order that complies with [§ 4-5-314\(c\)](#) within thirty (30) days of the close of the record of the proceedings.

(I) [Section 4-5-322](#) shall provide the exclusive method of review of the administrative law judge's order.

(6) If the filing office has not received a petition and cost bond from the secured party of record, within twenty (20) business days of delivery of the affidavit under subdivisions (e)(5)(A) and (B), the filing office shall void and remove from the public record the financing statement, along with all other documents associated with the financing statement, including the affidavit.

(7) If, following a contested case hearing of a petition for review filed by a secured party under subdivision (e)(5), an administrative law judge determines that there is reasonable basis or legal cause for the financing statement, the filing office shall remove the “Contested--Under Review” indication from the Uniform Commercial Code financing statement and the effectiveness of the financing statement will be reflected as the original date of filing.

(8) If, following a contested case hearing of a petition for review filed by a secured party under subdivision (e)(5), an administrative judge determines that the financing statement was filed without any reasonable basis or legal cause, the filing office shall void and remove from the public record the financing statement along with all other documents associated with the financing statement upon the administrative judge's order becoming effective and no longer subject to review pursuant to [§ 4-5-322](#).

(9) In a contested case hearing of a petition for review filed by a secured party to determine whether the financing statement was filed with any reasonable basis or legal cause, the prevailing party may recover costs and expenses, including reasonable attorneys' fees that are incurred in the review action.

Credits

[2000 Pub.Acts, c. 846, § 1, eff. July 1, 2001](#); [2017 Pub.Acts, c. 406, § 1, eff. Oct. 1, 2017](#).

Editors' Notes

UNIFORM COMMERCIAL CODE COMMENT

1. **Source.** Former Section 9-404.

2. **Duty to File or Send.** This section specifies when a secured party must cause the secured party of record to file or send to the debtor a termination statement for a financing statement. Because most financing statements expire in five years unless a continuation statement is filed (Section 9-515), no compulsion is placed on the secured party to file a termination statement unless demanded by the debtor, except in the case of consumer goods. Because many consumers will not realize the importance to them of clearing the public record, an affirmative duty is put on the secured party in that case. But many purchase-money security interests in consumer goods will not be filed, except for motor vehicles. See Section 9-309(1). Under Section 9-311(b), compliance with a certificate-of-title statute is “equivalent to the filing of a financing statement under this article.” Thus, this section applies to a certificate of title unless the section is superseded by a certificate-of-title statute that contains a specific rule addressing a secured party's duty to cause a notation of a security interest to be removed from a certificate of title. In the context of a certificate of title, however, the secured party could comply with this section by causing the removal itself or providing the debtor with documentation sufficient to enable the debtor to effect the removal.

Subsections (a) and (b) apply to a financing statement covering consumer goods. Subsection (c) applies to other financing statements. Subsection (a) and (c) each makes explicit what was implicit under former Article 9: If the debtor did not authorize the filing of a financing statement in the first place, the secured party of record should file or send a termination statement. The liability imposed upon a secured party that fails to comply with subsection (a) or (c) is identical to that imposed for the filing of an unauthorized financing statement or amendment. See Section 9-625(e).

3. **“Bogus” Filings.** A secured party's duty to send a termination statement arises when the secured party “receives” an authenticated demand from the debtor. In the case of an unauthorized financing statement, the person named as debtor in the financing statement may have no relationship with the named secured party and no reason to know the secured

party's address. Inasmuch as the address in the financing statement is “held out by [the person named as secured party in the financing statement] as the place for receipt of such communications [i.e., communications relating to security interests],” the putative secured party is deemed to have “received” a notification delivered to that address. See Section 1-201(26). If a termination statement is not forthcoming, the person named as debtor itself may authorize the filing of a termination statement, which will be effective if it indicates that the person authorized it to be filed. See Sections 9-509(d)(2), 9-510(c).

4. **Buyers of Receivables.** Applied literally, former Section 9-404(1) would have required many buyers of receivables to file a termination statement immediately upon filing a financing statement because “there is no outstanding secured obligation and no commitment to make advances, incur obligations, or otherwise give value.” Subsections (c)(1) and (2) remedy this problem. While the security interest of a buyer of accounts or chattel paper (B-1) is perfected, the debtor is not deemed to retain an interest in the sold receivables and thus could transfer no interest in them to another buyer (B-2) or to a lien creditor (LC). However, for purposes of determining the rights of the debtor's creditors and certain purchasers of accounts or chattel paper from the debtor, while B-1's security interest is unperfected, the debtor-seller is deemed to have rights in the sold receivables, and a competing security interest or judicial lien may attach to those rights. See Sections 9-318, 9-109, Comment 5. Suppose that B-1's security interest in certain accounts and chattel paper is perfected by filing, but the effectiveness of the financing statement lapses. Both before and after lapse, B-1 collects some of the receivables. After lapse, LC acquires a lien on the accounts and chattel paper. B-1's unperfected security interest in the accounts and chattel paper is subordinate to LC's rights. See Section 9-317(a)(2). But collections on accounts and chattel paper are not “accounts” or “chattel paper.” Even if B-1's security interest in the accounts and chattel paper is or becomes unperfected, neither the debtor nor LC acquires rights to the collections that B-1 collects (and owns) before LC acquires a lien.

5. **Effect of Filing.** Subsection (d) states the effect of filing a termination statement: the related financing statement ceases to be effective. If one of several secured parties of record files a termination statement, subsection (d) applies only with respect to the rights of the person who authorized the filing of the termination statement. See Section 9-510(b). The financing statement remains effective with respect to the rights of the others. However, even if a financing statement is *terminated* (and thus no longer is effective) with respect to all secured parties of record, the financing statement, including the termination statement, will remain of record until at least one year after it *lapses* with respect to all secured parties of record. See Section 9-519(g).

Notes of Decisions containing your search terms (0)

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T. C. A. § **47-9-513**, TN ST § **47-9-513**

Current through end of the 2017 First Regular Session of the 110th Tennessee General Assembly.