

LCB File No. R084-01

**PROPOSED REGULATION OF THE
SECRETARY OF STATE**

(This proposed regulation was adopted as LCB File No. E002-01)

July 2001

EXPLANATION - Matter in *italics* is new; matter in brackets [] is material to be omitted.

AUTHORITY: NRS 104.9526(1)

Section 1. Chapter 104 of NAC is hereby amended by adding thereto the provision set forth as sections 2 through 53 of this regulation.

Sec. 2. *The following terms shall have the respective meanings provided in this regulation. Terms not defined in this regulation which are defined in the UCC shall have the respective meanings accorded such terms in the UCC.*

Sec. 3. *“Amendment” means a UCC document that purports to amend the information contained in a financing statement. Amendments include assignments, continuations and terminations.*

Sec. 4. *“Assignment” is an amendment that purports to reflect an assignment of all or a part of a secured party’s power to authorize an amendment to a financing statement.*

Sec. 5. *“Correction statement” means a UCC document that purports to indicate that a financing statement is inaccurate or wrongfully filed.*

Sec. 6. *“Filing officer” means the Secretary of State.*

Sec. 7. *“Individual” means a human being, or a decedent in the case of a debtor that is such decedent's estate.*

Sec. 8. *“Initial financing statement” means a UCC record containing the information required to be in an initial financing statement and that causes the filing officer to establish the initial record of the existence of a financing statement.*

Sec. 9. *"Organization" means a legal person who is not an individual under Section 7.*

Sec. 10. *"Remitter" means a person who tenders a UCC document to the filing officer for filing, whether the person is a filer or an agent of a filer responsible for tendering the document for filing. "Remitter" does not include a person responsible merely for the delivery of the document to the filing officer, such as the postal service or a courier service but does include a service provider who acts as a filer's representative in the filing process.*

Sec. 11. *"UCC" means the Uniform Commercial Code as adopted in this state and in effect from time to time.*

Sec. 12. *"UCC document" means an initial financing statement, an amendment, an assignment, a continuation, a termination, a correction statement, or information request. The word "document" in the term "UCC document" shall not be deemed to refer exclusively to paper or paper-based writings; it being understood that UCC documents may be expressed or transmitted electronically or through media other than such writings. (Note: this definition is used for the purpose of these regulations only. The use of the term "UCC document" in these regulations has no relation to the definition of the term "document" in NRS 104.9102(dd).)*

Sec. 13. *UCC documents may be tendered for filing with the filing officer as follows.*

1. Personal delivery, at the filing officer's street address. The file time for a UCC document delivered by this method is when delivery of the UCC document is accepted by the filing officer (even though the UCC document may not yet have been accepted for filing and subsequently may be rejected).

2. Courier delivery, at the filing officer's street address. The file time for a UCC document delivered by this method is, notwithstanding the time of delivery, at the earlier of the time the

UCC document is first examined by a filing officer for processing (even though the UCC document may not yet have been accepted for filing and may be subsequently rejected), or the close of business on the next business day following the time of delivery. A UCC document delivered after regular business hours or on a day the filing office is not open for business will have a filing time of the next day the filing office is open for business.

3. Postal service delivery, to the filing officer's mailing address. The file time for a UCC document delivered by this method will be prior to the close of business on the next business day following the time of delivery (even though the UCC document may not yet have been accepted for filing and may be subsequently rejected). A UCC document delivered after regular business hours or on a day the filing office is not open for business will have a filing time of the next day the filing office is open for business.

4. Electronic mail and telefacsimile delivery, to the filing officer's e-mail address or the filing officer's fax filing telephone number. The file time for a UCC document delivered by this method is, notwithstanding the time of delivery, at the earlier of the time the UCC document is first examined by the filing officer for processing (even though the UCC document may not yet have been accepted for filing and may be subsequently rejected), or prior to the close of business on the next business day following the time of delivery. A UCC document delivered after regular business hours or on a day the filing office is not open for business will have a filing time of the next day the filing office is open for business.

5. UCC documents may be transmitted electronically using technologies and protocols that have been accepted by the sending and receiving filing officer.

Sec. 14. *UCC search requests may be delivered to the filing officer by any of the means by which UCC documents may be delivered to the filing officer. Requirements concerning search*

requests are set forth in section 50. UCC search requests upon a debtor named on an initial financing statement may be made by an appropriate indication on the face of the initial financing statement form if the form is entitled to be filed with the standard form fee and the relevant search fee is also tendered with the initial financing statement.

Sec. 15. *Filing fees and fees for public records services may be paid by the following methods.*

1. The filing officer discourages cash payment unless made in United States funds in person to the cashier at the filing office.

2. Checks made payable in United States funds to the filing officer, including checks in an amount to be filled in by a filing officer but not to exceed a particular amount, will be accepted for payment if they are cashier's checks or certified checks drawn on a bank acceptable to the filing officer or if the drawer is acceptable to the filing officer. Filings associated with insufficient funds will be marked as such with a filing officer statement and will be void.

3. The filing officer may accept payment via electronic funds transfer under National Automated Clearing House Association ("NACHA") rules from remitters who have entered into appropriate NACHA-approved arrangements for such transfers and who authorize the relevant transfer pursuant to such arrangements and rules.

4. A remitter may open a trust account for prepayment of filing fees by submitting an application furnished by the filing officer. Fees may be prepaid in amounts not less than \$100.00. The filing officer shall issue an account number to be used by a remitter who chooses to pay filing fees in advance. The filing officer shall deduct filing fees from the remitter's trust account when authorized to do so by the remitter. The remitter must provide to the filing officer written authorization to use the trust account to pay for the filing.

5. The filing officer may accept payment by credit or debit cards issued by approved card issuers. Remitters shall provide the filing officer with the card number, the expiration date of the card, the name of the approved card issuer, the name of the person or entity to whom the card was issued and the billing address for the card. Payment will not be deemed tendered until the issuer or its agent has confirmed to the filing officer that payment will be forthcoming.

Sec. 16. The filing officer shall only accept a UCC document for filing that is on a form prescribed by the filing officer.

Sec. 17. The duties and responsibilities of the filing officer with respect to the administration of the UCC are ministerial. In accepting for filing or refusing to file a UCC document pursuant to these regulations, the filing officer does none of the following:

- 1. Determine the legal sufficiency or insufficiency of a document.*
- 2. Determine that a security interest in collateral exists or does not exist.*
- 3. Determine that information in the document is correct or incorrect, in whole or in part.*
- 4. Create a presumption that information in the document is correct or incorrect, in whole or in part.*

Sec. 18. 1. The first day on which a continuation may be filed is the date corresponding to the date upon which the financing statement would lapse, six months preceding the month in which the financing statement would lapse. If there is no such corresponding date, the first day on which a continuation may be filed is the last day of the sixth month preceding the month in which the financing statement would lapse.

2. The last day on which a continuation may be filed is the date upon which the financing statement lapses.

Sec. 19. *In addition to the grounds listed in NRS 104.9516 allowing the filing officer to refuse a UCC record, the filing officer shall refuse a UCC record if (a) the record contains more than one secured party or assignee name or address and some names or addresses are missing or illegible, or (b) no address is given in the address field. As used in this section, address is deemed to include street address or post office box, city, state and postal code.*

Sec. 20. *If the filing officer finds grounds to refuse a UCC record, the filing officer shall return the record to the remitter and shall refund the filing fee.*

Sec. 21. *Nothing in these regulations prevents a filing officer from communicating to a filer or a remitter that the filing officer noticed apparent potential defects in a UCC document, whether or not it was filed or refused for filing. However, the filing officer is under no obligation to do so and may not, in fact, have the resources to do so or to identify such defects. The responsibility for the legal effectiveness of filing rests with filers and remitters and the filing officer bears no responsibility for such effectiveness.*

Sec. 22. *If a secured party or a remitter demonstrates to the satisfaction of the filing officer that a UCC document that was refused for filing should not have been refused, the filing officer will file the UCC document as provided in these regulations with a filing date and time assigned when such filing occurs. The filing officer will also file a filing officer statement that states the effective date and time of filing which shall be the date and time the UCC document was originally tendered for filing.*

Sec. 23. *The filing officer uses an information management system to store, index, and retrieve information relating to financing statements. The information management system includes an index of the names of debtors named on financing statements which have not lapsed. Sections 24 to 42 describe the UCC information management system.*

Sec. 24. *The primary data elements used in the UCC information management system are the following:*

1. Identification numbers.

a. Each initial financing statement is identified by its file number as described in NRS 104.9519. Identification of the initial financing statement is stamped on written UCC documents or otherwise permanently associated with the record maintained for UCC documents in the UCC information management system. A record is created in the information management system for each initial financing statement and all information comprising such record is maintained in such system. Such record is identified by the same information assigned to the initial financing statement.

b. A UCC document other than an initial financing statement is identified by a unique file number assigned by the filing officer. In the information management system, records of all UCC documents other than initial financing statements are linked to the record of their related initial financing statement.

2. The type of UCC document from which data is transferred is identified in the information management system from information supplied by the remitter.

3. The filing date and filing time of UCC documents are stored in the information management system. Calculation of the lapse date of an initial financing statement is based upon the filing date.

4. The names and addresses of debtors and secured parties are transferred from UCC documents to the UCC information management system using one or more data entry or transmittal techniques.

5. In the information management system, each financing statement has a status of active or inactive.

6. The total number of pages in a UCC document is maintained in the information management system.

7. An indicator is maintained by which the information management system identifies whether or not a financing statement will lapse and, if it does, when it will lapse. The lapse date is determined as provided in NRS 104.9515.

Sec. 25. For the purpose of this regulation, "individual" means a human being, or a decedent in the case of a debtor that is such decedent's estate. This regulation applies to the name of a debtor or a secured party on a UCC document who is an individual.

Sec. 26. The names of individuals are stored in files that include only the names of individuals, and not the names of organizations. Separate data entry fields are established for first (given), middle (given), and last names (surnames or family names) of individuals. A filer should place the name of a debtor with a single name (e.g., "Cher") in the last name field. The filing officer assumes no responsibility for the accurate designation of the components of a name but will accurately enter the data in accordance with the filer's designations.

Sec. 27. Titles and prefixes, such as "doctor," "reverend," "Mr.," and "Ms.," should not be entered in the UCC information management system. However, as provided in sections 44-47, when a UCC document is submitted with designated name fields, the data will be entered in the UCC information management system exactly as it appears.

Sec. 28. Titles or indications of status such as "M.D." and "esquire" shall not be entered in the UCC information management system. Suffixes that are not part of an individual's name should not be provided by filers in UCC records. Suffixes that indicate which individual is

being named, such as "senior," "junior," "I," "II," and "III," are entered in a field designated for name suffixes. In either case, as provided in sections 44-47, they will be entered into the information management system exactly as received.

Sec. 29. *Although they are not human beings, estates are treated as if the decedent were the debtor under sections 25-28.*

Sec. 30. *If the trust is named in its organic document(s), its full legal name, as set forth in such document(s), is used. Such trusts are treated as organizations. If the trust is not so named, the name of the settlor is used. If a settlor is indicated to be an organization, the name is treated as an organization name. If the settlor is an individual, the name is treated as an individual name. A UCC document that uses a settlor's name should include other information provided by the filer to distinguish the debtor trust from other trusts having the same settlor and all financing statements filed against trusts or trustees acting with respect to property held in trust should indicate the nature of the debtor. If this is done in, or as part of, the name of the debtor, it will be entered as if it were a part of the name under sections 44-47.*

Sec. 31. *Upon the filing of an initial financing statement the status of the parties and the status of the financing statement shall be as follows:*

1. Each secured party named on an initial financing statement shall be a secured party of record, except that if the UCC document names an assignee, the secured party/assignor shall not be a secured party of record and the secured party/assignee shall be a secured party of record.

2. The status of a debtor named on the document shall be active and shall continue as active until one year after the financing statement lapses.

3. The status of the financing statement shall be active. A lapse date shall be calculated, five years from the file date, unless the initial financing statement indicates that it is filed with respect to a public-financing transaction or a manufactured-home transaction, in which case the lapse date shall be thirty years from the file date, or if the initial financing statement indicates that it is filed against a transmitting utility, in which case there shall be no lapse date. A financing statement remains active until one year after it lapses, or if it is indicated to be filed against a transmitting utility, until one year after it is terminated with respect to all secured parties of record.

Sec. 32. Upon the filing of an amendment the status of the parties and the status of the financing statement shall be as follows:

- 1. An amendment shall affect the status of its debtor(s) and secured party(ies) as follows:*
 - a. An amendment that amends only the collateral description or one or more addresses has no effect upon the status of any debtor or secured party. If a statement of amendment is authorized by less than all of the secured parties (or, in the case of an amendment that adds collateral, less than all of the debtors), the statement affects only the interests of each authorizing secured party (or debtor).*
 - b. An amendment that changes a debtor's name has no effect on the status of any debtor or secured party, except that the related initial financing statement and all UCC documents that include an identification of such initial financing statement shall be cross-indexed in the UCC information management system so that a search under either the debtor's old name or the debtor's new name will reveal such initial financing statement and such related UCC documents. Such a statement of amendment affects only the rights of its authorizing secured party(ies).*

c. An amendment that changes the name of a secured party has no effect on the status of any debtor or any secured party, but the new name is added to the index as if it were a new secured party of record.

d. An amendment that adds a new debtor name has no effect upon the status of any party to the financing statement, except the new debtor name shall be added as a new debtor on the financing statement. The addition shall affect only the rights of the secured party(ies) authorizing the statement of amendment.

e. An amendment that adds a new secured party shall not affect the status of any party to the financing statement, except that the new secured party name shall be added as a new secured party on the financing statement.

f. An amendment that deletes a debtor has no effect on the status of any party to the financing statement, even if the amendment purports to delete all debtors.

g. An amendment that deletes a secured party of record has no effect on the status of any party to the financing statement, even if the amendment purports to delete all secured parties of record.

2. An amendment shall have no effect upon the status of the financing statement, except that a continuation may extend the period of effectiveness of a financing statement.

Sec. 33. *An assignment shall have no effect on the status of the parties to the financing statement, except that each assignee named in the assignment shall become a secured party of record.*

Sec. 34. *An assignment shall have no effect upon the status of the financing statement.*

Sec. 35. *Upon the timely filing of one or more continuations by any secured party(ies) of record, the lapse date of the financing statement shall be postponed for five years.*

Sec. 36. *The filing of a continuation shall have no effect upon the status of any party to the financing statement.*

Sec. 37. *Upon the filing of a continuation statement, the status of the financing statement remains active.*

Sec. 38. *The filing of a termination shall have no effect upon the status of any party to the financing statement.*

Sec. 39. *A termination shall have no effect upon the status of the financing statement and the financing statement shall remain active in the information management system until one year after it lapses, unless the termination relates to a financing statement that indicates it is filed against a transmitting utility, in which case the financing statement will become inactive one year after it is terminated with respect to all secured parties of record.*

Sec. 40. *The filing of a correction statement shall have no effect upon the status of any party to the financing statement.*

Sec. 41. *A correction statement shall have no effect upon the status of the financing statement.*

Sec. 42. *If there is no timely filing of a continuation with respect to a financing statement, the financing statement lapses on its lapse date but no action is then taken by the filing officer. On the first anniversary of such lapse date, the information management system renders or is caused to render the financing statement inactive and the financing statement will no longer be made available to a searcher unless inactive statements are requested by the searcher and the financing statement is still retrievable by the information management system.*

Sec. 43. *The filing officer may correct the errors of filing officer personnel in the UCC information management system at any time. If the correction occurs after the filing officer*

has issued a certification date, the filing officer shall file a filing officer statement in the UCC information management system identifying the record to which it relates the date of the correction, and explaining the nature of the corrective action taken. The record shall be preserved as long as the record of the initial financing statement is preserved in the UCC information management system.

Sec. 44. A filing should designate whether a name is a name of an individual or an organization. If the name is that of an individual, the first and last names and any suffix shall be given; a middle name or middle initial may be given.

Sec. 45. Organization names are entered into the UCC information management system exactly as set forth in the UCC document, even if it appears that multiple names are set forth in the document or if it appears that the name of an individual has been included in the field designated for an organization name.

Sec. 46. On a form that designates separate fields for first, middle, and last names and any suffix, the filing officer enters the names into the first, middle, and last name and suffix fields in the UCC information management system exactly as set forth on the form.

Sec. 47. The filing officer encourages the use of forms that designate separate fields for individual and organization names and separate fields for first, middle, and last names and any suffix. Such forms diminish the possibility of filing officer error and help assure that filers' expectations are met. However, filers should be aware that the inclusion of names in an incorrect field or failures to transmit names accurately to the filing officer may cause filings to be ineffective. All documents submitted through direct data entry will be required to use designated name fields.

Sec. 48. *The filing officer shall take no action upon receipt of a notification, formal or informal, of a bankruptcy proceeding involving a debtor named in the UCC information management system.*

Sec. 49. *The filing officer maintains for public inspection a searchable index for all records of UCC documents. The index shall provide for the retrieval of a record by the name of the debtor and by the file number of the initial financing statement and each filed UCC document relating to the initial financing statement.*

Sec. 50. *Search requests shall contain the following information:*

- 1. A search request should set forth the name of the debtor to be searched and must specify whether the debtor is an individual or an organization. A search request will be processed using the name in the exact form it is submitted.*
- 2. The name and address of the person to whom the search report is to be sent.*
- 3. The appropriate fee shall be enclosed, payable by a method described in section 15.*
- 4. If a filer requests a search at the time a UCC document is filed, the name searched will be the debtor name as set forth on the form. The requesting party shall be the remitter of the UCC record, and the search request shall be deemed to request a search that would retrieve all financing statements filed on or prior to the date the UCC document is filed.*

Sec. 51. 1. *A UCC search request may limit the copies requested by limiting the copies by the city of the debtor, the date of filing (or a range of filing dates) or the identity of the secured party of record on the financing statement.*

2. A report created by the filing officer in response to such a request shall contain the following statement: "A limited search may not reveal all filings against the debtor searched

and the searcher bears the risk of relying on such a search." The request may ask for copies of UCC documents identified on the primary search request.

Sec. 52. Search results are created by applying standardized search logic to the name presented to the filing officer. Human judgment does not play a role in determining the results of the search. The following apply to searches:

- 1. There is no limit to the number of matches that may be returned in response to the search criteria.*
- 2. No distinction is made between upper and lower case letters.*
- 3. Punctuation marks and accents are disregarded.*
- 4. Words and abbreviations at the end of a name that indicate the existence or nature of an organization as set forth in the "Ending Noise Words" list as promulgated and adopted by the International Association of Corporation Administrators are disregarded. This list is hereby incorporated by reference.*
- 5. The word "the" at the beginning of the search criteria is disregarded.*
- 6. All spaces are disregarded.*
- 7. For first and middle names of individuals, initials are treated as the logical equivalent of all names that begin with such initials, and no middle name or initial is equated with all middle names and initials. For example, a search request for "John A. Smith" would cause the search to retrieve all filings against all individual debtors with "John" as the first name, "Smith" as the last name, and with the initial "A" or any name beginning with "A" in the middle name field. If the search request were for "John Smith" (first and last names with no designation in the middle name field), the search would retrieve all filings against individual*

debtors with “John” as the first name, “Smith” as the last name and with any name or initial or no name or initial in the middle name field.

8. After using the preceding to modify the name to be searched, the search will reveal only names of debtors that are contained in active financing statements and match the name requested.

Sec. 53. *Reports created in response to a search request shall include the following:*

1. Identification of the filing officer and the certification of the filing officer required by the UCC.

2. The date the report was generated.

3. Identification of the name searched.

4. The certification date and time for which the search is effective.

5. Identification of each unlapsed initial financing statement filed on or prior to the certification date and time corresponding to the search criteria, by name of debtor, by identification number, and by file date and file time.

6. For each initial financing statement on the report, a listing of all related UCC documents filed by the filing officer on or prior to the certification date.

7. Copies of all UCC documents revealed by the search and requested by the searcher.