

## **REDACTION AND THE IMPACT ON UCC DUE DILIGENCE**

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In many ways, the availability of public record information on the Internet has made the due diligence process much easier for UCC searchers. Nearly all state-level filing offices now provide electronic access to UCC index data and images of filed records (collectively “UCC records”). This has been a tremendous improvement over the largely paper-based UCC system that existed prior to the 2001 adoption of Revised Article 9.

However, easily accessible information about debtors contained in online UCC records has raised concerns about privacy and identity theft. Privacy advocates, the media and concerned citizens have put pressure on filing offices to prevent disclosure of sensitive information contained in their records. In response, many filing offices have found it necessary to implement redaction programs that remove sensitive information from UCC records.

Redaction programs threaten, at least for a period of time, to undo some of the benefits resulting from online access to UCC records. Redaction programs divert filing office personnel resources and impose additional costs. The result is often a slower turnaround for the entire UCC search and filing process.

This article provides background on why redaction has become an issue for filing offices, how redaction works and its impact on due diligence. It also offers suggestions to help UCC filers and searchers navigate redaction issues and avoid contributing to the underlying problems.

### **UCC Records and Personally Identifiable Information**

UCC records generally have simple content requirements. A financing statement is sufficient under UCC Section 9-502(a) if it provides just the name of the debtor, name of the secured party and an indication of the collateral. The party addresses and, if the debtor is an entity, organizational information may also be required to avoid rejection by the filing office under Section 9-516(b).

Trouble arises when UCC filers submit records that go beyond the statutory content requirements and provide personally identifiable information for an individual debtor. According to a report by the National Association of Secretaries of State, “personally identifiable information” is “any information relating to an identifiable individual who is the subject of the information. The concern is that personally identifiable information could be used by criminals to access a person’s financial resources. One piece of personally identifiable information in particular has drawn the attention of UCC filing offices. That is an individual debtor’s Social Security Number (“SSN”).

Prior to 2001, several states required UCC records to include the SSN of an individual debtor. When the safe harbor forms in Section 9-521 were developed for Revised Article

9, the designers accommodated those states by including a field specifically for the debtors SSN or federal tax identification number. However, by the time Revised Article 9 took effect all but two states dropped the SSN requirement. Only North Dakota and South Dakota continue to require SSNs by statute.

The safe harbor UCC forms retained the SSN field. UCC filers often provide an SSN in that field, but may place it in other areas of the form or electronic record as well. Collateral statements, attachments and even debtor name fields may contain embedded SSNs. In general, filing officers have no authority to reject a record simply because it contains an SSN. The result is that records with SSNs can be found throughout the UCC index in every state.

It is the SSNs embedded in UCC records that create serious legal and public relations problems for filing offices. The constant media reports of identity theft horror stories have the public understandably concerned. These concerns directly impact the filing offices.

There are plenty of examples where filing offices have been the subject of unwanted publicity surrounding the public disclosure of SSNs. In 2006, the Ohio Secretary of State was sued by an individual who found his SSN in an online UCC image. On July 21, 2007 The Dallas Morning News reported that Hall of Fame quarterback Troy Aikman's SSN was available from UCC records on the Texas Secretary of State's web site. One privacy advocate attempts to force filing offices to remove online access to records that could disclose SSNs by posting public records with the SSNs of well-known people on her web site, including that of former U.S. Secretary of State Colin Powell.

### **The Redaction Solution**

The elected officials that oversee UCC filing offices are justifiably worried about the public's perception of how they protect personally identifiable information. In their effort to protect debtors and avoid the potential for litigation and bad publicity, many filing offices have initiated redaction programs.

According to the International Association of Commercial Administrators ("IACA"), an organization whose membership includes the state-level UCC filing officers, "redaction" means "the act of striking out or otherwise removing from the public record or public view any sensitive, private or confidential information not required by law and which is exempt by law from disclosure in a manner that does not distort the meaning of the record."

There are multiple methods of redacting SSNs from UCC records. At a basic level, filing office staff can simply use a magic marker to block out the SSN on written forms. However, most states already have millions of UCC images on file that might contain SSNs. The filing offices generally lack the resources necessary to manually review and redact each image. To deal with the large number of existing records, filing offices have invested in computer redaction software.

Computerized redaction systems vary in capabilities. A basic system may insert a black box over a designated area on each image. More sophisticated systems scan the entire image in more detail and block out number patterns that appear to be SSNs. The software can usually be set to different levels of sensitivity, depending on the filing office preferences.

Redaction systems have some limitations. Filers can effectively cloak an SSN from recognition by redaction software. UCC records contain SSNs embedded in reference numbers, inserted in debtor name fields or within the collateral. An SSN can appear just about anywhere on the form. Attached exhibits sometimes contain SSNs that can easily slip through the system.

Even the best redaction programs will miss some SSNs. The Colorado Secretary of State's office, for example, conducted a major redaction program in 2007. When that project was completed, some SSNs remained visible in the records. The filing office ran the redaction process for a second time. Even two passes didn't entirely solve the problem. In September 2008, a privacy advocate was still able to find an SSN in the records. In response, the filing office began a third round of redaction.

Another limitation of redaction software is that it can remove necessary information. Although rare, there are examples in some states where redaction programs have blocked out serial numbers in the collateral field, reference numbers and even parts of debtor names. Because of the redaction software limitations, the best programs involve a computer scan to identify potential SSNs, followed by human review.

### **Impact on UCC Due Diligence**

Perhaps the most noticeable effect of filing office redaction initiatives is that the UCC search process takes more time. To prevent disclosure of SSNs during redaction projects, filing offices often remove online UCC images from public view. Instead of instantly downloading images online, a UCC searcher must order copies from the filing office. The filing office can then manually review each image and redact personally identifiable information before releasing the copies.

Manual review slows the turnaround time for search orders. The Colorado Secretary of State, for example, recently blocked online access to UCC records while it carries out a redaction project. During this time, the filing office warned searchers to expect delays of up to five business days for delivery of UCC copy orders.

Redaction initiatives can also increase the cost of due diligence. A filing office may need to review and redact several million records. The cost of the software and personnel necessary to conduct an effective redaction program can be very expensive.

Even after completing a redaction project the filing office frequently must deal with ongoing costs. Filing office staff must continue to review and redact incoming UCC

records. Moreover, just in case courts later need access to the original records, filing offices must incur the cost to maintain a duplicate database of unredacted images. Eventually, the filing offices have to pass these costs on in the form of increased filing fees, expedite fees or copy costs.

## **Conclusion**

Searchers do need to be prepared for longer turnaround times whenever a state engages in a redaction program. The good news is that the delays are only temporary. However, completing the redaction effort can take anywhere from weeks to months.

Lenders and legal professionals can help filing offices avoid the need for more drastic responses to concerns over privacy and identity theft. Filers should never provide any unnecessary personally identifiable information on a UCC record, especially the SSN. Remember, only North and South Dakota require an individual debtor's SSN. The rest of the state and county filing offices do not want any SSNs on submitted records.