Revised Article 9 of The Uniform Commercial Code: An Overview

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On July 1, 2001, substantial revisions to Article 9 of the Uniform Commercial Code (UCC) took effect in Kentucky. Article 9 is the set of statutes that governs how banks, businesses and individuals may take an interest in property as collateral or security for a debt. The revisions to Article 9 have changed how such security interests are created, perfected and enforced. Many of these changes are designed to update the antiquated system of filing financing statements and promote an electronic filing system accessible over the Internet. Many states, including Kentucky, have already added searching capabilities and online filing to their websites.

Because these revisions have such significant consequences for businesses, *Client Update* will present a series of articles discussing the changes to the law and various problems that have occurred in implementing the new law since the revisions took effect. In this issue, we'll provide an overview of the main changes to Article 9.

- **Central Filing**: Before Revised Article 9 took effect, Kentucky required all financing statements to be filed with the county clerk in the county in which the collateral was located. Other states often required filing at both the county level and at the Secretary of State's office. Revised Article 9 has greatly simplified the filing system and requires only one filing with the Secretary of State for most types of collateral. Note, however, that fixtures and certain other defined classes of collateral tied to real estate still require the filing of a financing statement at the county level. Also, since financing statements are effective for five years, searches will still need to be performed at both the county and state offices until 2006, when the statements filed before the revisions took effect expire.

- **Where to File**: Not only has filing been simplified within each state, but determining the state in which to file a financing statement is now much easier as well. Before, a secured creditor was required to file in every jurisdiction in which collateral was located. This required the creditor to monitor the activities of the debtor and to become familiar with the laws governing filings of financing statements in a number of different jurisdictions. Now, the secured party simply files in the state in which the debtor resides. If the debtor is an entity such as a corporation or LLC, it is deemed to reside in the state in which it is organized.

- **Form of Financing Statement**: A national, uniform financing statement form has been created to replace each state's individual UCC-1 form. A similar financing statement amendment replaces the UCC-3 form used for filing terminations, continuations, amendments and assignments of financing statements. In all cases, the debtor's signature is no longer required on the financing statement or amendment. Instead, the secured creditor must have the debtor sign or authenticate by electronic signature a security agreement, which grants the security interest in the collateral and authorizes the filing of the financing statement. This change allows the secured party to file a financing statement electronically.

- **Broader Scope of Collateral**: Several categories of property have been newly added or redefined under Revised Article 9, including:

    - commercial tort claims
    - deposit accounts
    - health care receivables, defined as a right to payment under an insurance policy for health care goods or services provided
    - rights to payment under a letter of credit
    - manufactured homes
    - payment intangibles
    - promissory notes
    - software

- **Collecting and Liquidating the Collateral Upon Default**: Revised Article 9 has changed the procedure for enforcing a security interest in a variety of ways. When a secured party sends notice that it is going to liquidate collateral it has collected, the creditor must now send such notice to not only the debtor and any secondary obligor (such as a guarantor), but also to other secured parties. Also, the new law includes "safe harbor" forms for such notice that list exactly what information must be provided, depending on the type of collateral and sale. Once the debt has been paid, a termination statement must be filed by the creditor in most situations within 20 days after the debtor demands it.

These changes have had the most widespread effect on businesses and lenders, but other revisions include changes to the procedure by which agricultural lenders take a security interest in livestock, changes to the rights of third parties, such as trust beneficiaries, and changes to the title lien system. The rules governing a secured party's interest in proceeds of collateral sold by the debtor have been rewritten, as well.

Naturally, the implementation of such extensive changes to the law of secured transactions has raised many issues that were not considered during the drafting process. Additionally, many logistical problems have arisen in making the transition from the old law to Revised Article 9. In our next issue, we'll discuss some of the problem areas of which every creditor and debtor should be aware.