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## WHEN CAN A DEBTOR TERMINATE A UNIFORM COMMERCIAL CODE FINANCING STATEMENT?

A lender engaging in a secured transaction with a debtor will most commonly file a Uniform Commercial Code (UCC) Financing Statement to “perfect” its security interest in collateral. UCC Financing Statements are filings used to establish a secured party’s seniority concerning specified collateral, typically filed promptly after a debtor becomes contractually bound by the security agreement and other loan documents in connection with a secured lender’s extension of credit.

In North Carolina, the UCC Financing Statement is recorded with the Secretary of State, unless the collateral involves fixtures, in which case the UCC Financing Statement is considered a fixture filing and recorded in the property records of the county where the real property is located (such as the Register of Deeds in Mecklenburg County or the equivalent recorder’s office in another county).

### UCC Statement Duration and Termination Requirements

UCC Financing Statements are valid for 5 years after which the UCC Financing Statement lapses and is no longer effective as to other secured lenders, unless a lender extends the effectiveness of a UCC Financing Statement by filing a continuation.

The Uniform Commercial Code does not require a secured party to automatically file a UCC termination after the debt obligation secured by the collateral is satisfied unless the collateral involves consumer goods (goods used or bought for use primarily for personal, family, or household purposes). In commercial secured transactions, a secured lender may take it upon itself to file a UCC termination, but that is not always the case.

### When a Termination Statement Becomes Necessary

What happens if there is no longer any obligation by a debtor secured by the collateral; the UCC Financing Statement is still effective and has not lapsed; and the secured party has failed to file a UCC termination?

This situation may arise when a debtor attempts to secure financing with a subsequent lender, or during a buyer’s due diligence investigation in an M&A transaction. In either case, a lien search may uncover an effective UCC Financing Statement where underlying debt obligations no longer exist, and the UCC Financing Statement needs to be formally terminated on record. UCC 9-513 addresses this situation where a secured party fails to file a UCC termination.

## Debtor's Right to File Under UCC 9-513

Under UCC 9-513, a secured party is required to file a UCC termination or send the debtor a UCC termination for the debtor to file, within 20 days after receiving an “authenticated [signed] demand” from the debtor.

If there is no longer an obligation secured by the collateral covered by the UCC Financing Statement and no commitment to make an advance or give value, the secured party is required to either file the termination statement or send the debtor a termination statement for the debtor to file. If a secured party fails (or refuses) to take either action upon expiration of the 20 days, the debtor may file the UCC termination if there are no obligations owed to the secured party.

Other circumstances exist where a debtor may file a UCC termination, for example, if the debtor never authorized the secured party to file a UCC Financing Statement. However, that situation is less common because the initial loan and/or security agreement will almost certainly authorize the secured party to file a UCC Financing Statement against the debtor.

## Penalties for Failing to Comply with Termination Requirements

A secured party who fails to file or send a UCC termination to the debtor is subject to damages under UCC 9-625(b) (including if that failure results in the debtor's inability to obtain, or increased costs from, alternative financing), in addition to a \$500 penalty under 9-625(f).

A secured party should take any receipt of a demand by a debtor seriously, just as a debtor should be aware of its options if there is a need to terminate a UCC Financing Statement.

## JAH Can Help

There is a specific process that secured parties and debtors must adhere to under the UCC, and best practices for handling such a situation. The **corporate attorneys** at JAH can assist if either party ever finds itself in this situation. **[Click here to contact a member of our Corporate Group if you need assistance.](#)**

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