

NEW YORK UCC FORMS

(Still partying like it's 2002 in NYC!)

It has been said that there are few things less uniform than the Uniform Commercial Code. While that may be true in many ways, there is one area that tends to be consistent across the United States – the use of the national UCC forms.

When the most recent major revisions to the UCC forms took place back in 2013, the forms were updated to accommodate the statutory changes to the text (and to fix some other minor issues). 98% of the states adopted this most recent version of the UCC forms (dated 4/20/11).

So, which State is it that makes up the 2% of States still using the 2002 version of the UCC forms? Well, it is the one that is known throughout the world as one of the most important financial centers on the planet – New York! While the State of New York did adopt many of the statutory changes in 2013, to this day, they continue to use the 2002 version of the UCC forms. From a practical standpoint, many of the differences between the 2002 and the 2011 versions of the forms are only in appearance. While the location of some fields changed, the substantive content generally did not. However, there are two areas for which New York's Article 9 statute and the 2002 forms require special attention.

In New York, when filing a UCC-1 financing statement or a UCC-3 Amendment adding a debtor, filers must still complete the sections that identify the type of organization (field 1e) and the jurisdiction of organization (field f). Filers are NOT required to complete the field asking for the organizational ID number.

Prior to 2013, a filing office was obligated to reject a UCC-1 filing if the debtor was an organization, and the filing didn't identify the type of organization, the jurisdiction of organization, and the organizational ID number of the debtor. The 2002 UCC-1 forms contain three fields for this information (1e, 1f, and 1g). This information was helpful to filers, as the mailing address provided for the debtor on the UCC form frequently differed from the debtor's location for the purpose of filing the financing statement.



While the information was helpful, the 2013 amendments nonetheless removed these three items as reasons for rejection under section 9-516, and the UCC forms were amended to remove the fields requiring this information.

However, when New York adopted the Article 9 amendments in 2014, it adopted a non-uniform version of 9-516. In New York, two of the three pieces of information are still required. While the debtor's organizational ID number is no longer required, the type of organization and the jurisdiction of organization must be provided.

When the collateral is being held in trust, the filer should add specific language to the financing statement.

The 2013 amendments also clarified the filing requirements when the financing statement covers collateral that is held in a trust. The UCC filing must include additional information to distinguish the collateral held in trust from property that may be held by other parties (e.g. the trustee, the grantor, the testator, etc.). This additional information should not be added to or made part of the debtor name. Instead, the information should be included in the part of the form that relates to the collateral description.

The 2011 UCC-1 form contains a field (field 5) located directly underneath the collateral description that is used for this purpose. This field provides the filer with two options. The first option is to check a box that provides that the collateral is held in trust, and the second option is to check a box to indicate the collateral is being administered by a Decedent's personal representative.

The 2002 UCC-1 form still being used in New York does not contain this field, and as a result, filers should add the appropriate language to the form when filing. The best practice is to take the language used in field 5 of the 2011 form and copy it directly into the collateral field of the 2002 form.



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