

Georgia Fixture Filing Requirements and Other Changes to the UCC Effective July 1, 2013: What You Need to Know

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On July 1, 2013, the first major revisions since 2001 to the Uniform Commercial Code (UCC) Article 9 went into effect in Georgia and 42 other states. These amendments are the product of a 2010 recommendation from the Uniform Law Commission aimed at fixing some of the inconsistencies, ambiguities, filing issues, and other matters that have arisen over the past decade of practicing under the previous round of amendments. With the goal of providing greater guidance and clarity, the Commission's recommendations were signed into law for Georgia by Governor Deal on May 6, 2013.

Article 9 of the UCC governs security interests in personal property, including the creation of a security interest in property through attachment, perfection of a security interest, and remedies available upon default of payment or performance. Importantly, Article 9 does not govern security interests in real property – with the exception of fixtures. State laws continue to govern deeds to secure debt, mortgages, deeds of trust, and other forms of real property security interests.

While it is assumed that all 50 states will soon enact the UCC amendments – as all 50 did for the 2001 amendments – currently, 43 states plus the District of Columbia have enacted such a law. The remaining 7 states, listed below, have all introduced similar legislation this year, but have yet to enact laws amending Article 9: Alabama, Arizona, California, Massachusetts, New York, Oklahoma, and Vermont.

The Major Change: Fixture Filings

Among other minor changes to the wording of the UCC, the most recent modifications alter the way that Georgia deals with fixture filings, amending sections 9-502 and 9-515, and reverting back to a practice followed in Georgia in the past.

- **OLD RULE.** Until last week, Georgia law did not allow a recorded deed to secure debt or mortgage (collectively “security instrument”) to be effective as a financing statement filed as a fixture filing. This meant that a separate filing, in addition to the recorded security instrument, was required to perfect a security interest in fixtures.
- **NEW RULE.** The revisions effective July 1, 2013 serve to eliminate the repetitive nature of filing an additional financing statement as a fixture filing. The amendments provide that a recorded security instrument can be

effective as a fixture filing.

- **REQUIRED INFORMATION.** For the record of a security instrument to serve as a fixture filing, the following information must be included in the body of the security instrument:

1. **The record must indicate the goods or accounts that it covers**
2. **The goods must be fixtures or to become fixtures related to the real property described in the record**
-OR-
The collateral must be related to the real property described in the record and be (i) as-extracted collateral or (ii) timber to be cut

[NOTE: In some cases it may be difficult to determine whether goods are or will become fixtures. Nothing prohibits the filing of a “precautionary” fixture filing, which would provide protection in the event that goods are determined to be fixtures.]

3. **The record does not have to indicate that it is to be filed in the real property records**
4. **The record must sufficiently provide the name of the debtor, with surname and first personal name being sufficient** (see below: no driver’s license rule applies)
5. **The security instrument must be duly filed for record in the real estate records of each county where any part of the land (including fixtures) is situated**

[NOTE: The usual five-year maximum life for financing statements does not apply to security instruments that operate as fixture filings. Such a security instrument is effective for the duration of the real-property recording (until the security instrument is released, satisfied of record, or its effectiveness otherwise terminates as to the real property).]

Other Changes of Note

- **Name of Individual Debtor.** Previously, the ambiguous name requirement led to significant problems in practice, when names on financing statements would be changed, shortened, abbreviated, or misspelled. For individuals, the current revisions specify that the debtor’s name must match exactly the unexpired driver’s license or other state issued identification of the debtor. (Note: this will be interpreted quite literally, even if the driver’s license or identification card contains a typo, uses a nickname, or contains a suffix such as “Jr.”, “M.D.”, etc.)
 - **IMPORTANT EXCEPTION** : A security instrument intended also to serve as a fixture filing does NOT have to follow the driver’s license rule (see above); however, a financing statement filed which specifically includes fixtures must meet the driver’s license test.
- **Information required on financing statement.** The old law required that statements include debtor’s type of organization, jurisdiction, and organizational ID number. Because of the burdens of cost and delay of filing created by this requirement, its limited benefit to only a small subset of registered organizations, and the fact that state laws already preclude the use of duplicate or deceptively similar names, the revisions to the UCC effective July 1, 2013 eliminate the requirement of these three pieces of information.
- **Electronic Chattel Paper (ECP).** Previously, “control” of ECP required meeting a six factor test. The new law, while retaining the six factor test as a safe harbor, expands the ability of secured parties to perfect a security interest in ECP by providing that “control” is also accomplished through any system for evidencing the transfer of interest in the ECP which reliably establishes the secured party as the person to which the ECP was assigned.
- **Debtor moving states.** Previously, when a debtor moved to another state or a debtor in another state was added by sale or merger, perfected security interests that attached prior to the move remained perfected for four months after the move. The four month rule did not apply to security interests in collateral acquired after the move, however, meaning that the secured party was unperfected in such new collateral until it perfected under

the laws of the new state. The new law makes it more likely that a secured party will remain perfected after the move or after a new debtor from another state becomes bound by a sale, merger or like agreement to the original debtor, by providing perfection of security interests that attach within four months after the move or addition of debtor, as long as the secured party has taken steps that would have perfected the security interest in the debtor's original state.

- **Form UCC-5.** The Article 9 revisions to the UCC change the name of the UCC-5 from "Correction Statement" to "Information Statement." The form may be filed by secured parties or debtors, whenever they feel that clarification of the public record regarding the financing statements is needed. The form continues to have no legal effect.

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