

MAINE STATE LEGISLATURE

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December 9, 1964

Doris Hayes, Supervisor, Corporation Div. Secretary of State

Jerome S. Natus, Assistant

Attorney General

Secretary of State's Filing and Termination Procedures under the Uniform Commercial Code.

FACTS:

In a memorandum to this Department dated November 30, 1964, you outlined certain procedures which are contemplated by the Secretary of State's Office pertaining to filing and termination under the Maine Uniform Commercial Code.

You indicate the Secretary of State's Office intends to maintain an alphabetical index of the financing statements consisting of white U.C.C. - 1 and U.C.C. - 3 forms and any index and cross-reference forms you find necessary to use. The numerical copies of the forms will be kept in numerical sequence in another section of the file.

When a termination statement is filed, the Secretary of State's Office intends to remove alphabetical, numerical, and other documents pertaining to the same from its files, mark them terminated, and place the number and date on all copies of the statement. The Secretary of State's Office then intended to send or deliver the white form of the U.C.C. - 1 statement and the white form, if any, of a U.C.C. - 3 statement to the person terminating. The pink and yellow forms of the U.C.C. - 1 statement and of the U.C.C. - 3 statement, if any, were to be retained for the file of the Secretary of State's Office. It is assumed that what is meant by file of the Secretary of State's Office is the alphabetical index of financing statements, and that the person terminating is the secured party within the Code definition of a 'secured party.' U.C.C. 9-105 (1) (i).

In your memorandum three questions are posed in the following order:

1. How can we use the original (white) for an alphabetical index, pull this when the termination is filed and return it to the secured party if the law says we will keep the index for one year?

2. Is the white copy of the financing statement the original?
3. Does Sec. 9-403 (4) "The index may be made up of the statements themselves, copies thereof, separate cards or otherwise." give us the right to substitute the pink or yellow copies for the original in our index after the termination has been filed?

Your memorandum also refers to four subsections of the Maine Uniform Commercial Code; namely, § 9-403 (4), 9-404 (2), 9-408 (b), and 9-402 (4).

It is our understanding that inquiries have been made of the Secretary of State's Office as to filing and termination procedures in municipalities by certain municipal officials.

QUESTION:

Are the filing and termination procedures of the Secretary of State's Office as outlined proper procedures under the Maine Uniform Commercial Code?

ANSWER:

See opinion.

OPINION:

We have respectfully declined to answer the specific questions asked as there is no necessity to do so provided proper procedures are to be followed.

The procedures outlined by your Office are proper procedures. They have statutory authority under the Code with the exception of the keeping of copies of forms in a numerical sequence in another section of the file.

The Code does not require that copies of financing statement forms be kept in a numerical sequence. There is, however, no objection to the keeping of forms in such a sequence. Section 9-403 (4) of the Code does require that "a filing officer shall mark each statement with a consecutive file number and with the date and hour of filing and shall hold the statement for public inspection."

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Section 9-403 (4) also requires an alphabetical index according to the name of the debtor. The pink and/or yellow forms of the financing statement, whatever their designation, can replace the white form in the index as Section 9-403 (4) provides: "The index may be made up of the statement themselves, copies thereof, separate cards or otherwise." The pink and/or yellow form must contain a notation as to the presentation to the filing officer of a termination statement meeting the requirements of 9-404 (1). This requirement is established by Section 9-404 (2), which states: "On presentation to the filing officer of such a termination statement, he must note it in the index."

Any inquiries from municipal officials as to the proper filing and termination procedures should be referred to the legal counsel for that municipality.

Jerome S. Matus
Assistant Attorney General

JSM/all