

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

AT RICHMOND, OCTOBER 11, 2017
SCC-CLERK'S OFFICE
DOCUMENT CONTROL CENTER

COMMONWEALTH OF VIRGINIA, *ex rel.*

2017 OCT 11 A 10:42

STATE CORPORATION COMMISSION

CASE NO. CLK-2017-00004

Ex Parte: In the matter of Adopting
Revisions to the Rules Governing Administration of
the Office of the Clerk of the Commission and
Uniform Commercial Code Filing Rules

ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia ("Code") provides that the State Corporation Commission ("Commission") shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction. Section 12.1-18 of the Code requires the Commission to appoint a clerk of the Commission ("Clerk"), whose duties are set forth in Title 12.1, Chapter 4 of the Code. These duties include charging and collecting certain fees as the Commission may fix by order or rule pursuant to §§ 12.1-20, 12.1-21.1, and 12.1-21.2 of the Code. Additionally, § 8.9A-526 of Virginia's Uniform Commercial Code – Secured Transactions, § 8.9A-101 *et seq.* of the Code, provides that the Commission shall promulgate and make available to the public such rules as it deems necessary to implement Title 8.9A of the Code and in accordance with applicable law.

The rules and regulations issued by the Commission regarding administration of the Office of the Clerk are set forth in Title 5, Chapter 40 of the Virginia Administrative Code ("VAC"). Additionally, the rules and regulations issued by the Commission pursuant to § 8.9A-526 of the Code are set forth in Title 5, Chapter 30 of the VAC. These rules and regulations also may be found on the Commission's website, respectively, at:

www.scc.virginia.gov/clk/lawreg.aspx and www.scc.virginia.gov/clk/uccrules.aspx.

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The Office of the Clerk has submitted to the Commission a number of proposed revisions to Chapter 40 and Chapter 30 of Title 5 of the VAC entitled, respectively, "Administration of the Office of the Clerk of the Commission" ("Clerk's Rules") and "Uniform Commercial Code Filing Rules" ("UCC Rules"). Effective July 1, 2017, § 12.1-21.2 of the Code provides that the Commission "may charge and collect the fees as are fixed by order or rule for furnishing and certifying a copy of any document or any information from its records and may charge and collect reasonable fees for providing records from an electronic data processing system, computer database, or any other structured collection of data."

Proposed changes to Rule 5 VAC 5-40-10 ("Fees to be Charged by the Commission") revise the fees for furnishing paper copies of Commission records and the Clerk's certification of those copies. The Clerk currently charges \$.50 per page for paper copies and \$3 for certifying a paper copy. Pursuant to the revisions, the Clerk shall charge: (a) no fee for 25 or fewer pages of paper copies; (b) \$10 if the number of pages copied is between 26 and 50; (c) \$20 if the number of pages copied is 51 or more; and (d) \$6 for certifying a paper copy. The revisions also provide that the Commission may charge and collect reasonable fees for: (a) providing records from a computer database, electronic data processing system, or any other structured collection of data; or (b) for abstracting or summarizing data or creating a record that does not already exist, if the Commission chooses to fulfill such a request.

The Clerk also proposes revisions to the UCC Rules (Chapter 30). Most of the revisions are minor and provide technical amendments to the Rules. In addition, the Clerk requests changes regarding the filing time for certain UCC records based on the type of delivery, changes regarding payment methods, and the requirements regarding the filing of UCC records previously refused for acceptance by the filing office in error.

Proposed changes to Rule 5 VAC 5-30-20 ("Definitions") provide technical revisions to the current definitions of "Filing officer statement" and "Remitter".

Proposed changes to Rule 5 VAC 5-30-30 ("General filing and search requirements") provide technical amendments to subsection A, and revise subsection B regarding the filing time for a UCC record delivered to the filing office for filing by postal delivery, as well as clarifying the filing time for a UCC record delivered to the filing office for filing after regular business hours or on a day when the filing office is not open for business.

Proposed changes to Rule 5 VAC 5-30-40 ("Forms, fees, and payments") revise subsection B 3 regarding the fees for furnishing a copy of a UCC record and for certifying a copy of a UCC record. Additional proposed changes to this rule revise subsection C regarding the method of payment to: (1) allow payment by debit and credit card of a type approved by the filing office if paid in person at the filing office; and (2) allow payment by debit card of a type approved by the filing office for documents delivered to the filing office by authorized electronic delivery, while deleting electronic checks as a method of payment.

Proposed changes to Rule 5 VAC 5-30-50 ("Acceptance and refusal of records; continuation statements") provide technical amendments to subsections A, B and C. The proposals also revise subsection F by deleting the current language stating that a secured party or remitter demonstrate that a UCC record should not have been refused for filing, and by revising the method for determining the filing date and time of such records. The revision proposes that, if it is determined that the filing office refused to accept a UCC record in error, the filing office shall file the UCC record with the filing date and time that were assigned, based on the method of delivery, by the filing office after the record was originally delivered to the filing office for filing.

Proposed changes to Rule 5 VAC 5-30-60 ("Filing and data entry procedures") include technical and clarifying amendments to subsections A and C. The proposal also removes the statement in subsection A that the filing office shall file a filing officer statement "[i]f the correction occurs after the filing office has issued a certification". The recommended changes further propose that a filing officer statement in subsection A shall include other action taken and an explanation of the corrective or other action taken.

Proposed changes to Rule 5-30-70 ("Search requests and reports") include technical amendments to subsections A and C to change "records" to "UCC records".

The Clerk has recommended to the Commission that the proposed revisions should be considered for adoption. The Clerk also has recommended to the Commission that a hearing should be held only if requested by those interested persons who specifically indicate that a hearing is necessary and the reasons therefore.

Upon consideration of the foregoing,

IT IS THEREFORE ORDERED THAT:

- (1) The proposed revisions are appended hereto and made a part of the record herein.
- (2) Comments or requests for hearing on the proposed revisions must be in writing, directed to Joel H. Peck, Clerk of the Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, and received on or before November 20, 2017. Any request for hearing shall state why a hearing is necessary and why the issues cannot be adequately addressed in written comments. All correspondence shall contain reference to Case No. CLK-2017-00004. Interested persons desiring to submit comments electronically may do so by following the instructions available at the Commission's website:
<http://www.scc.virginia.gov/case>.

(3) The proposed revisions shall be posted on the Commission's website at <http://www.scc.virginia.gov/case>. Interested persons may also request a copy of the proposed revisions from the Clerk by telephone, mail or e-mail.

AN ATTESTED COPY HEREOF, together with a copy of the proposed revisions, shall be sent to the Registrar of Regulations for publication in the *Virginia Register*.

AN ATTESTED COPY HEREOF shall be delivered to the Clerk of the Commission, who shall forthwith mail or e-mail a copy of this Order to any interested persons as he may designate, as well as provide a copy of the proposed revisions to any interested persons that may request a copy. A list of the foregoing persons that the Clerk may designate shall be filed in this case.

STATE CORPORATION COMMISSION, CLERK'S OFFICE

Uniform Commercial Code Filing; SCC Clerk's Office Fees

5VAC5-30-20. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Amendment" means a UCC record that amends the information contained in a financing statement. Amendments also include (i) assignments and (ii) continuation and termination statements.

"Assignment" means an amendment that assigns all or a part of a secured party's power to authorize an amendment to a financing statement.

"Continuation statement" shall have the meaning prescribed by § 8.9A-102(a)(27) of the Code of Virginia.

"File number" shall have the meaning prescribed by § 8.9A-102(a)(36) of the Code of Virginia.

"Filing office" means the Clerk's Office of the State Corporation Commission.

"Filing officer" means the Clerk of the State Corporation Commission.

"Filing officer statement" means a statement entered into the UCC information management system to ~~describe the correction of an error or inaccuracy made~~ explain an action by the filing office.

"Financing statement" shall have the meaning prescribed by § 8.9A-102(a)(39) of the Code of Virginia.

"Individual" means a natural person, living or deceased.

"Information statement" means a UCC record that indicates ~~that~~ a financing statement is inaccurate or wrongfully filed.

"Initial financing statement" means a UCC record containing the information required to be in an initial financing statement and that causes the filing office to establish the initial record of existence of a financing statement.

"Organization" means a legal person that is not an individual.

"Personal identifiable information" shall have the meaning prescribed by § 12.1-19 B of the Code of Virginia.

"Remitter" means a person who ~~tenders~~ delivers a UCC record to the filing office for filing, whether the person is a filer or an agent of a filer responsible for ~~tendering~~ delivering the UCC record for filing. "Remitter" does not include a person responsible merely for the delivery of the UCC record to the filing office, such as the postal service or a courier service but does include a service provider who acts as a filer's representative in the filing process.

"Secured party of record" shall have the meaning prescribed by § 8.9A-511 of the Code of Virginia.

"Termination statement" shall have the meaning prescribed by § 8.9A-102(a)(80) of the Code of Virginia.

"Through date" means the most recent date that all submissions for a specified day have been indexed in the UCC information management system.

"UCC" means the Uniform Commercial Code - Secured Transactions (§ 8.9A-101 et seq. of the Code of Virginia).

"UCC information management system" means the information management system used by the filing office to store, index, and retrieve information relating to financing statements.

"UCC record" means an initial financing statement, an amendment, and an information or a filing officer statement, and shall not be deemed to refer exclusively to paper or paper-based writings.

5VAC5-30-30. General filing and search requirements.

A. UCC records may be ~~tendered for filing at~~ delivered to the filing office for filing as follows:

1. By personal delivery, at the filing office street address;
2. By courier delivery, at the filing office street address;
3. By postal delivery, to the filing office mailing address; or
4. By electronic delivery method provided and authorized by the filing office.

B. The filing time for a UCC record delivered to the filing office for filing by personal, or courier, ~~or postal~~ delivery is the time the UCC record is date-and-time stamped by the filing office even though the UCC record may not yet have been accepted for filing and may be subsequently rejected. The filing time for a UCC record delivered to the filing office for filing by postal delivery is the next close of business following the time of delivery (even though the UCC record may not yet have been accepted for filing and may be subsequently rejected). A UCC record delivered to the filing office for filing after regular business hours or on a day the filing office is not open for business will have a filing time of the close of business on the next day the filing office is open for business. The filing time for a UCC record delivered to the filing office for filing by authorized electronic delivery method is the date and time the UCC information management system receives the UCC record and determines that all the required elements of the transmission have been received in the required format.

C. UCC search requests may be delivered to the filing office by personal, courier, or postal delivery, or by electronic delivery method provided and authorized by the filing office.

5VAC5-30-40. Forms, fees, and payments.

A. Forms.

1. The filing office shall only accept forms for UCC records that conform to the requirements of this chapter.
2. The forms approved by the International Association of Commercial Administrators as they appear on the filing office's website (<http://www.scc.virginia.gov/clk/uccfile.aspx>) shall be accepted.
3. The filing office may approve other forms for acceptance, including additional forms approved by the International Association of Commercial Administrators.

B. Fees.

1. The fee for filing and indexing a UCC record is \$20.
2. The fee for submitting a UCC search request is \$7.00.
3. ~~The fee for furnishing UCC search copies is \$.50 for each page. The fee for affixing the seal of the commission to a certificate is \$3.00.~~ There is no fee for furnishing a copy of a UCC record of 25 or fewer pages. The fee for furnishing a copy of a UCC record that exceeds 25 pages is \$10.00. For certifying a copy, the fee for the certificate and affixing thereto the seal of the commission or a facsimile thereof is \$6.00.

C. Methods of payment. Filing fees and fees for services provided under this chapter may be paid by the following methods:

1. Payment in by debit or credit card of a type approved by the filing office and cash shall be accepted if paid in person at the filing office.
2. Personal ~~checks~~ check, cashier's ~~checks~~ check and money ~~orders~~ order made payable to the State Corporation Commission or Treasurer of Virginia shall be accepted

for payment if drawn on a bank acceptable to the filing office or if the drawer is acceptable to the filing office.

3. Payment by debit or credit card acceptable to of a type approved by the filing office or ~~electronic check~~ may shall be accepted for the filing or submission of a documents document delivered to the filing office for filing by authorized electronic delivery method.

4. The filing office may accept payment via electronic funds under National Automated Clearing House Association (NACHA) rules from remitters who have entered into appropriate NACHA-approved arrangements for such transfers and who authorize the relevant transfer pursuant to such arrangements and rules.

D. Overpayment and underpayment policies.

1. The filing office shall notify the remitter of the amount of any overpayment exceeding \$24.99 and send the remitter the appropriate procedure and form for requesting a refund. The filing office shall refund an overpayment of \$24.99 or less only upon the written request of the remitter. A request for a refund shall be delivered to the filing office within 12 months from the date of payment.

2. Upon receipt of a UCC record with an insufficient filing fee, the filing office shall return the UCC record to the remitter with a notice stating the deficiency and may retain the filing fee.

E. Uncollected filing fee payment. A filing may be voided by the filing office if the filing fee payment that is submitted by the remitter is dishonored, declined, refused, reversed, charged back to the commission, returned to the commission unpaid, or otherwise rejected for any reason by a financial institution or other third party, and after notice from the filing office, the remitter fails to submit a valid payment for the filing fee and any penalties.

F. Federal liens. A notice of lien, certificate and other notice affecting a federal tax lien or other federal lien presented to the filing office pursuant to the provisions of the Uniform Federal Lien Registration Act (§ 55-142.1 et seq. of the Code of Virginia) shall be treated as the most analogous UCC record unless the Uniform Federal Lien Registration Act or federal law provides otherwise.

Part II

UCC Record Requirements

5VAC5-30-50. Acceptance and refusal of UCC records; continuation statements.

A. The duties and responsibilities of the filing office with respect to the administration of the UCC are ministerial. In accepting for filing or refusing to file a UCC record pursuant to this chapter, the filing office does none of the following:

1. Determine the legal sufficiency or insufficiency of a UCC record;
2. Determine that a security interest in collateral exists or does not exist;
3. Determine that information in the UCC record is correct or incorrect, in whole or in part; or
4. Create a presumption that information in the UCC record is correct or incorrect, in whole or in part.

B. The first day on which a continuation statement may be filed is the day of the month corresponding to the date upon which the related financing statement would lapse in the sixth month preceding the month in which the financing statement would lapse. If there is no such corresponding date, the first day on which a continuation statement may be filed is the last day of the sixth month preceding the month in which the financing statement would lapse. The last day on which a continuation statement may be filed is the date upon which the financing statement lapses. If the lapse date falls on a Saturday, Sunday, or other day on which the filing

office is not open, then the last day on which a continuation statement may be filed, if ~~tendered delivered to the filing office~~ for filing by personal, courier, or postal delivery, is the last day the filing office is open prior to the lapse date. An authorized electronic delivery method may be available to file a continuation statement on a Saturday, Sunday, or other day on which the filing office is not open. The relevant anniversary for a February 29 filing date shall be March 1 in the fifth or 30th year following the date of filing.

C. Except as provided in 5VAC5-30-40 D, if the filing office finds grounds to refuse a UCC record for filing, including those set forth in § 8.9A-516 (b) of the Code of Virginia, the filing office shall return the UCC record to the remitter and may retain the filing fee.

D. Nothing in this chapter shall prevent the filing office from communicating to a filer or a remitter that the filing office noticed apparent potential defects in a UCC record, whether or not it was filed or refused for filing. However, the filing office is under no obligation to do so and may not, in fact, have the resources to identify potential defects. The responsibility for the legal effectiveness of filing rests with filers and remitters and the filing office bears no responsibility for such effectiveness.

E. The filing office may act in accordance with § 12.1-19 B of the Code of Virginia with respect to submissions that contain personal identifiable information.

~~F. If a secured party or a remitter demonstrates to the satisfaction of the filing office that a UCC record that was refused for filing should not have been refused, the filing office shall file the UCC record as provided in this chapter with a filing date and time assigned when the record was originally tendered for filing. If it is determined that the filing office refused to accept the record in error, the filing office shall file the UCC record with the filing date and time that were assigned, based on the method of delivery, by the filing office after the record was originally delivered to the filing office for filing. The filing office shall also file a filing officer statement that~~

states the effective date and time of filing, which shall be the date and time the UCC record was originally ~~tendered~~ delivered to the filing office for filing.

Part III

UCC Record Filing and Searches

5VAC5-30-60. Filing and data entry procedures.

A. The filing office may correct errors made by its personnel in the UCC information management system at any time. ~~If the correction occurs after the filing office has issued a certification, the~~ The filing office shall file a filing officer statement in the UCC information management system identifying the UCC record to which it relates, the date of the correction or other action taken, and ~~explaining the nature~~ an explanation of the corrective or other action taken. The ~~record~~ filing officer statement shall be preserved as long as the UCC record of the initial financing statement is preserved in the UCC information management system.

B. An error by a filer or remitter is the responsibility of that person. It can be corrected by filing an amendment or it can be disclosed by filing an information statement pursuant to § 8.9A-518 of the Code of Virginia.

C. 1. A UCC record ~~tendered~~ delivered to the filing office for filing shall designate whether a name is a name of an individual or an organization. If the name is that of an individual, the surname, first personal name, additional name or names, and any suffix shall be given.

2. Organization names are entered into the UCC information management system exactly as set forth in the UCC record, even if it appears that multiple names are set forth in the UCC record or if it appears that the name of an individual has been included in the field designated for an organization name.

3. The filing office will only accept forms that designate separate fields for individual and organization names and separate fields for the surname, first personal name, additional

name or names, and any suffix. Such forms diminish the possibility of filing office error and help assure that filers' expectations are met. However, the inclusion of names in an incorrect field or the failure to transmit names accurately to the filing office may cause a financing statement to be ineffective.

D. The filing office shall take no action upon receipt of a notification, formal or informal, of a bankruptcy proceeding involving a debtor included in the UCC information management system.

5VAC5-30-70. Search requests and reports.

A. The filing office maintains for public inspection a searchable index for all UCC records. The index shall provide for the retrieval of all filed UCC records by the name of the debtor and by the file number of the initial financing statement.

B. Search requests shall be made only on the Information Request form (Form UCC11) and shall include:

1. The name of the debtor to be searched, specifying whether the debtor is an individual or organization. A search request will be processed using the exact name provided by the requestor.
2. The name and address of the person to whom the search report is to be sent.
3. Payment of the appropriate fee, which shall be made by a method set forth in this chapter.

C. Search requests may include:

1. A request that copies of UCC records found in the search be included with the search report, and
2. Instructions on the mode of delivery desired, if other than by postal delivery, which shall be followed if the desired mode is acceptable to the filing office.

D. Search results are produced by the application of standardized search logic to the name presented to the filing office. The following criteria apply to searches:

1. There is no limit to the number of matches that may be returned in response to the search request.
2. No distinction is made between upper and lower case letters.
3. Punctuation marks and accents are disregarded.
4. "Noise words" are limited to "an," "and," "for," "of," and "the." The word "the" is disregarded. Other noise words appearing anywhere except at the beginning of an organization name are disregarded. Certain business words are modified to a standard abbreviation: company to "co," corporation to "corp," limited to "ltd," incorporated to "inc."
5. All spaces are disregarded.
6. After using the preceding criteria to modify the name to be searched, the search will reveal names of debtors that are contained in unexpired or all initial financing statements in an alphabetical list.

E. Reports created in response to a search request shall include the following:

1. The date and time the report was generated.
2. Identification of the name searched.
3. The through date as of the date and time the report was generated.
4. For an organization, the name as it appears after application of the standardized search logic.
5. Identification of each unexpired initial financing statement or all initial financing statements filed on or prior to the report date and time corresponding to the search criteria, by name of debtor, by file number, and by file date and file time.



6. For each initial financing statement on the report, a listing of all related UCC records filed by the filing office on or prior to the report date.

7. Copies of all UCC records revealed by the search and requested by the requestor.

F. The filing office may provide access to the searchable index via the Internet that produces search results beyond exact name matches. Search results obtained via the Internet shall not constitute an official search and will not be certified by the filing office.

5VAC5-40-10. Fees to be charged by the commission.

A. The Office of the Clerk shall charge and collect a fee of \$6.00 for each certificate of fact provided pursuant to § 12.1-20 of the Code of Virginia.

B. The commission shall charge and collect for furnishing and certifying a paper copy of any document, instrument, or paper or any information from its records ~~\$.50 per page and \$3.00 for the certificate and affixing thereto the seal of the commission or a facsimile thereof.~~ a fee as set forth below.

1. If the number of pages is 25 or fewer, no charge;

2. If the number of pages is between 26 and 50, \$10;

3. If the number of pages is 51 or more, \$20.

If the commission receives two or more requests for copies of documents or information that it reasonably believes are intended to evade the payment of the charge for furnishing a copy, the requests may be aggregated and treated as a single request.

C. For certifying a paper copy, the commission shall charge and collect \$6.00 for the certificate and affixing thereto the seal of the commission or a facsimile thereof.

D. The commission may charge and collect reasonable fees:

1. For providing records from a computer database, an electronic data processing system, or any other structured collection of data; or
2. For abstracting or summarizing data or creating a record that does not already exist, if the commission chooses to fulfill a request for same.