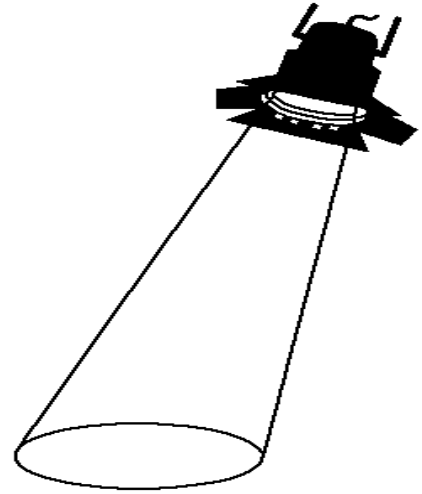




The University of Tennessee
County Technical Assistance Service

SPOTLIGHT on CURRENT ISSUES

Executive Director's Memo
May 28, 2001



NEW UCC LAW

AND NEW FEE SCHEDULE

☆ EFFECTIVE JULY 1, 2001 ☆

KEY PROVISIONS OF IMPORTANCE TO REGISTERS OF DEEDS

I. Initial Financing Statements – where these should be filed after July 1, 2001:

All initial financing statements that are filed in Tennessee should be filed with the Secretary of State except the following which will be filed with the Register of Deeds (T.C.A. § 47-9-501):

A. *Initial financing statements with “as extracted” collateral*

“As extracted” collateral means oil, gas, or other minerals that are subject to a security interest that is created by a debtor having an interest in the minerals before extraction and attaches to the minerals as extracted, or accounts arising out of the sale at the wellhead or minehead of oil, gas or other minerals in which the debtor had an interest before extraction.

B. *Initial financing statements with timber to be cut as collateral*

C. *Fixture filings – the collateral is goods that are or are to become fixtures, except that fixture filings of transmitting utilities should be filed with the Secretary of State.*

A “transmitting utility” includes railroads, pipelines, sewers, transmitting communications (whether electrically, electromagnetically or by light), and entities transmitting electricity, steam, gas or water. T.C.A. § 47-9-102.

- ➡ ***Some financing statements formerly filed in Tennessee should be filed in another state under the new law. THE REGISTER SHOULD NOT ADVISE THE CUSTOMER ON THE PLACE TO FILE!!***

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II. Amendments to Initial Financing Statements – where these should be filed after July 1, 2001:

- A. Financing statements filed with the Register before July 1, 2001 which *do not relate to real estate (fixture filings, timber, minerals, etc.)*, should not be amended with the Register except for termination, but rather through filings with the Secretary of State, if the filing is in Tennessee. A termination statement may be filed with the Register for financing statements not related to real estate and filed with the Register before July 1, 2001. T.C.A. §§ 47-9-705, -706, -707.

NOTE: the term “financing statement” after July 1, 2001 refers to the initial financing statement and any filed record relating to the initial financing statement, including any amendment or correction statement. T.C.A. § 47-9-102(a)(39). An “amendment” includes amendments as formerly used as well as continuations, assignments, releases, and terminations. T.C.A. § 47-9-521(b).

- B. Initial financing statements relating to real estate (fixture filings, timber, minerals, etc.) filed both before and after July 1, 2001 with the Register may be amended in the Register’s office, except for financing statements dealing with collateral of transmitting utilities.

III. Correction Statement – A new type of UCC record after July 1, 2001 (T.C.A. § 47-9-518).

A person may file a correction statement with respect to a record indexed under the person’s name if the person believes that the record is inaccurate or was wrongly filed.

IV. The Register MAY refuse to accept and file a UCC record ONLY for the following reasons:

- ➡ ***NOTE: Filing in the wrong office is NOT a reason to reject a UCC record .
Also, lack of a signature is NOT a reason to reject a UCC record. (T.C.A. § 47-9-516).***

- A. The record is not communicated by a method or medium of communication authorized by the Register.
- B. The amount tendered is not equal to or greater than the sum of the filing fee plus recording tax (“mortgage” tax) on indebtedness, if any;
- C. The Register is unable to index the record because:
1. In the case of an initial financing statement, a name for the debtor is not provided;
 2. In the case of an amendment or correction statement, the record does not identify the initial financing statement or identifies an initial financing statement whose effectiveness has lapsed;
 3. Where the debtor’s name is given in the initial financing statement or an amendment as an individual and the debtor’s last name given in the record offered does not identify the debtor;

4. In a fixture filing, the record does not provide a sufficient description of the real property to which it relates;
- D. In the case of an initial financing statement or an amendment that adds a secured party, the record does not provide a name and mailing address for the secured party of record;

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- E. In the case of an initial financing statement or an amendment that provides a name of a debtor which was not previously provided in the financing statement, the record does not provide a mailing address for the debtor or indicate whether the debtor is an individual or an organization;
- F. In the case of an assignment reflected in an initial financing statement or an amendment, the record does not provide a name and mailing address of the assignee;
- G. In the case of a continuation statement, the record is not filed within the 6 month period;
- H. The record does not contain, either on its face or in an accompanying sworn statement, the language required under the “mortgage” tax law;
- I. If the information in the record is unable to be read or deciphered by the Register’s office.

V. Numbering, maintaining and indexing UCC records (T.C.A. § 47-9-519).

The Register has the following duties regarding each UCC record filed with the Register after July 1, 2001:

- A. Assign a unique number to the filed record.
- B. Create a record that bears the number assigned to the filed record and the date and time of filing.
- C. Maintain the filed record for public inspection.
- D. Index as follows:
 1. Index an initial financing statement according to the name of the debtor and index all filed records relating to the initial financing statement in a manner that associates with one another an initial financing statement and all filed records relating to the initial financing statement.
 2. Index a record that provides a name of a debtor which was not previously provided in the financing statement to which the record relates also according to the name that was not previously provided.
 3. If a financing statement is filed as a fixture filing or covers “as-extracted” collateral or timber to be cut, it must be indexed under the names of the debtor and each owner of record shown on the financing statement as if they were mortgagors under a mortgage of the real property described and also reverse indexed under the name of the secured party as if the secured party were the mortgagee.
 4. If a financing statement is filed as a fixture filing or covers “as-extracted” collateral or timber to be cut, an assignment or amendment must be indexed under the name of the assignor or grantor, and reverse indexed under the name of the assignee in the case of an assignment.
- E. The register is required to maintain the capability to retrieve a record by the name of the debtor and by the file number assigned to the initial financing statement to which the record relates.

VI. Responses to information requests remain optional (T.C.A. § 47-9-523).

VII. UCC Fees – No change on July 1, 2001. (T.C.A. § 47-9-525).

The fee for UCC filings remains \$15 plus 50 cents per page for each page over 10 pages. Also, the Register may charge \$15 for each name more than one required to be indexed. The portion of the UCC filing fee earmarked for computerization of the Register's office remains \$2 per UCC document fee collected. Written responses to information requests are \$15.

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VIII. Non-UCC Recording Fees – Effective July 1, 2001 (T.C.A. § 8-21-1001, see Compiler's Notes).

The Register's basic fee statute has been simplified. *This affects all non-UCC documents except corporate charters and certificates of limited partnership. The new standard fee schedule is as follows:*

Military discharges:	No Charge
For each plat, map or survey	\$15
For each document (other than UCC, corporate charter, or limited partnership certificate)	\$10
For each instrument in a document in excess of one instrument	\$ 5
For each page in a document in excess of two pages	\$ 5
For a certified copy of a plat, map or survey	\$ 5
For a certified copy of a document other than a map, plat or survey, page size not to exceed 8 ½" x 14", per page	\$ 1

Please note that fees for filing plats are standardized at \$15 regardless of the size of the plat. A new fee of \$5 is added for a certified copy of a plat, map or survey. There remains no fee for recording military discharges. *The fee for recording each document is \$10 plus \$5 for each instrument in a document in excess of one, plus \$5 for each page in a document in excess of two pages.* The fee for a certified copy of a document other than a plat, map or survey remains at \$1 per page.

A document is defined as the entire writing offered for registration, which may contain one or more instruments. An instrument is defined as a legal writing that gives formal expression to or evidence of a complete legal act or agreement requiring a separate index entry. For example, a document that contains a deed and a release of a deed of trust contains two instruments, and a document that contains three assignments contains three instruments.

The computer fee remains at \$2 per document (not "instrument" according to the new definitions noted above) for non-UCC documents. The \$1 fee for issuing a state transfer or "mortgage" tax receipt remains the same.

If you have questions concerning this act, please contact your CTAS regional consultant.

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