Monitor Your Business Liens

Amundsen Davis Corporate Alert
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Corporate housekeeping should include a line item for monitoring your business liens. As a debtor, the health of your business is reliant on a good credit score. As a creditor, losing your security interest on a lien could prove costly to your bottom line. It is critical to: (1) know what liens have been filed against your company; (2) take steps to remove expired liens; (3) renew liens you have against debtors that are set to expire, and (4) amend liens that have debtor name changes. A UCC-1 financing statement is a legal form a creditor files in the state to protect a creditor's security interest by giving the public notice that there is a right to take possession of and sell certain assets for repayment of a specific debt with a certain debtor.

A creditor files a lien with the Secretary of State. Usually this is filed in the state where the business is incorporated or organized. However if the collateral is something that is tied to a particular piece of real property, such as timber, or fixtures for example, the filing is made in the county where the property is located.

For creditors each UCC-1 financing statement needs to be monitored. Verifying and monitoring a debtor's name for changes is essential. If a debtor's name changed your UCC-1 must be amended to reflect the change in order to remain perfected. The Uniform Commercial Code (UCC) follows the definition of the debtor name as that of the "Organic Public Record". This is defined as "a record that is available to the public for inspection and is a record consisting of the record initially filed with or issued by a State or the United States to form or organize an organization and any record filed with or issued by the State or the United States which amends or restates the initial record." There are cases, for instance, in which the difference between "and" and the "&" in a debtor name has left a creditor with an unsecured lien. What this means is that you cannot rely on Certificates of Good Standing as this is a reflection of compiled information that has been entered into systems. You need copies of the actual Articles of Incorporation or Articles of Organization and any copies of Articles of Amendment that have been filed. These are the debtor's most recent charter documents.

UCC-1s expire after five years. If your loan has a longer term you will need to file a continuation statement prior to the expiration, or else your security interest will be unperfected. Also, the debtor responsible for the loan may change due to a sale or merger of the company. A third party may terminate your UCC-1 without you knowing it. This would be a wrongful termination under Section

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9-510(a) of the UCC which states, "a filed record is effective only to the extent it was filed by someone authorized to do so under Section 9-509." Under Section 9-509 a termination requires a secured party's authorization to be filed.

You might be surprised to learn that, if you apply for a loan, even if a lender denies your loan, it may have filed a lien on your company. Some lenders include a UCC lien on your business or property in the application for a loan as part of their due diligence even if they don't eventually finance your loan. If you find yourself in this frustrating situation, you have recourse under Section 9-513 of the UCC. First the debtor must send an authenticated demand to the secured party. The demand must state the name and address of the secured party as indicated on the financing statement. The secured party has twenty days to either terminate the filing or send a termination statement to the debtor that the debtor can then file. If this does not happen, the debtor can file a UCC-3 termination statement.

There are many aspects of managing liens that business owners need to monitor on a continual basis. Diligence in this area is a critical aspect to running a healthy organization.

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