

COUNTY TECHNICAL ASSISTANCE SERVICE

***Filing New UCC Financing Statements***

We have recently received questions from several registers regarding the new UCC financing statement forms. It is our understanding that the changes to the forms are causing some confusion as to the proper filing of UCC financing statements. Under the new law, the information relating to whether financing statements are to be filed as personal property filings or real property filings is found on a separate form entitled "UCC Financing Statement Addendum." The UCC Financing Statement Addendum contains boxes to be checked to indicate whether the financing statement (1) covers timber to be cut; (2) covers as-extracted collateral; or (3) is filed as a fixture filing. The boxes for the name and address of the record owner and the property description are also found on the addendum. According to the registers who contacted us, they are often receiving only the initial "UCC Financing Statement" form without the addendum attached. It is also our understanding that some of these filings, while not including the addendum, do contain information written on the initial financing statement form or otherwise included, perhaps as some other type of attachment, indicating the financing statement is to be recorded in the real estate records (this could include a property address, legal description, derivation clause, etc.) Because of this, the registers are unsure as to how to handle the documents.

This issue has arisen most likely because filers are not aware of the changes to the forms made in the new law, which became effective July 1, 2013. Hopefully this issue will resolve itself as filers become more familiar with the new law. In the meantime, we have created a chart to assist registers in determining how to handle these filings. You can access the chart on page 3 below. The decisions regarding whether to accept or reject the filings, as well as how to index the filings, depend on what information you receive. There are very specific reasons filing offices can reject UCC documents. These are set forth in Tennessee Code Annotated Section 47-9-516(b). In reviewing these documents, filing offices need to take care not to go beyond the reasons set forth in the statute.

The following are valid reasons for rejection under the statute:

- (1) The record is not communicated by a method or medium of communication authorized by the register;
- (2) 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;
- (3) The register is unable to index the record because:
  - (A) In the case of an initial financing statement, a name for the debtor is not provided;
  - (B) In the case of an amendment or information statement, the record does not identify the initial financing statement or identifies an initial financing statement whose effectiveness has lapsed;
  - (C) 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;
  - (D) In the case of a record filed as a fixture filing or a record covering timber to be cut or as-extracted collateral, the record does not provide the name of the debtor and a sufficient description of the real property to which it relates;
- (4) 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;

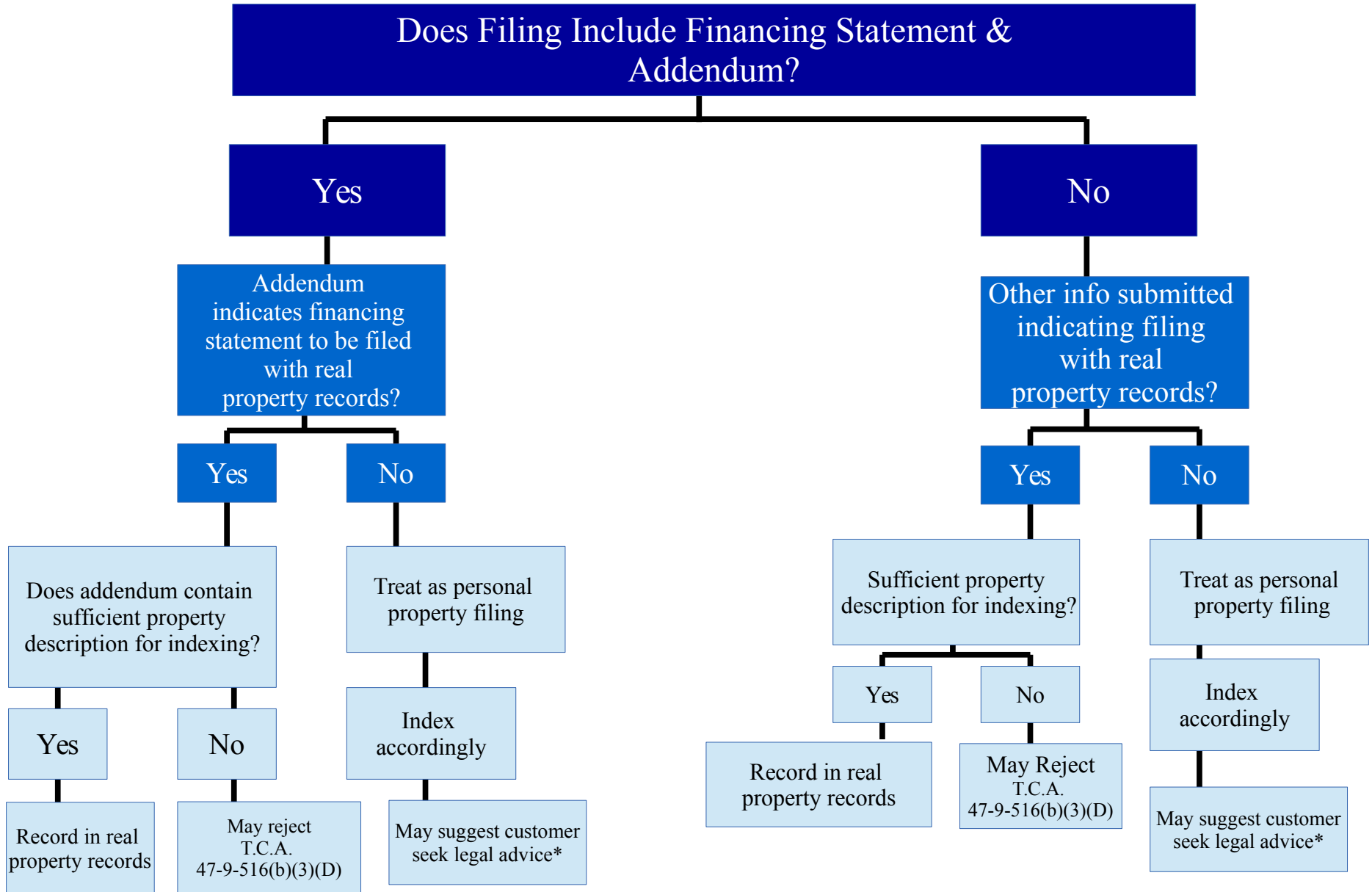
- (5) In the case of an initial financing statement or an amendment that provides a name of a debtor which was not previously provided in the financing statement, the record does not provide a mailing address for the debtor or indicate whether the debtor is an individual or an organization;
- (6) In 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;
- (7) In the case of a continuation statement, the record is not filed within the six-month period;
- (8) The record does not contain, either on its face or in an accompanying sworn statement, the language required under the "mortgage" tax law;
- (9) The register is unable to read or decipher the information in the record.

Based on this list, you should not reject a financing statement solely for being submitted without the addendum. Furthermore, while filing in the wrong office may affect a document's validity, filing in the wrong office is not listed as a reason for rejection in Section 47-9-516(b). In these instances, you may want to inform the filing party that the proper office to file a UCC relating to personal property generally is the Secretary of State's office, but we do not recommend you reject a document on this basis. The customer should seek advice from a Tennessee licensed attorney to determine the best location to file the document to perfect their lien.

Please keep in mind this is only our opinion based on our analysis of the applicable law. **We strongly recommend you consult with your county attorney before taking any action.** If you have further questions on this, please feel free to contact Kristy Godsey Brown, Legal Consultant, at CTAS.

# UCC Filing Decision Tree

Revised August 2013



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