



# NASS

National Association  
of Secretaries of State

## STATE STRATEGIES TO SUBVERT FRAUDULENT UNIFORM COMMERCIAL CODE (UCC) FILINGS

A Report for State  
Business Filing Agencies

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## Introduction

The vast majority of Uniform Commercial Code (UCC) financing statements filed with Secretary of State offices are legitimate documents authorized by relevant parties. However, financing statements with no legitimate basis under the UCC, often referred to as fraudulent or bogus filings, are a persistent problem for state filing offices and the individuals targeted by these spurious claims.

Often used as a retaliatory measure by government separatist group members, prison inmates, and others looking to harass or intimidate public officials and corporations/lending institutions, these filings can create serious financial difficulties for victims.

While various judicial and administrative remedies are available to those who believe that a filing has wrongfully named them as a debtor, there is a general feeling amongst the nation's Secretaries of State that more can and should be done to address the issue. Removing a bogus lien from the public registry can be a costly and time-consuming process for wrongfully targeted individuals. In some states, this action may require a court order. The legal expenses involved can run to thousands of dollars, and the process can take months, or even years. Restoring damaged personal credit histories can take even longer.

Collective efforts by states to subvert fraudulent UCC filings date back to 2004, when the National Association of Secretaries of State (NASS) and the International Association of Commercial Administrators (IACA) developed recommendations to help state filing offices promulgate a more uniform, nationwide response to the problem. The recommendations, updated in 2006, included the adoption of a clear judicial remedy for victims of bogus financing statements, along with stronger civil and criminal penalties for those who submit these claims.<sup>i</sup>

Given the dramatic increase in the number of fraudulent UCC filings during the past several years, state officials continue working to identify additional ways to provide victims of bogus filings with expedited relief. Members of the NASS Business Services Committee have also urged states to contemplate faster, less costly options for keeping bogus liens out of public records. The role of the Secretary of State's office and its level of authority in the filings process are typically at the center of this latest push. Nearly half of all states have implemented their own legislative approaches to subverting fraudulent Uniform Commercial Code (UCC) filings, and more than a dozen of them have given the state filing office greater influence or oversight in the process.

This report is designed to provide state filing offices and other government agencies with an understanding of these relatively new laws, as well as the issues they seek to address. Section one provides background information on the rise in fraudulent filings, shedding light on the growing sovereign citizen movement and the most common types of bogus filings. Section two provides an overview of the Uniform Commercial Code (UCC) and the important influence this model law has on the role and authority of state filing offices. Section three outlines the 2006 NASS/IACA Task Force recommendations and highlights recent state approaches to the proliferation of bogus filings.

## The Rise in Fraudulent UCC Filings

Bogus UCC filings have become more common in recent years due to the explosion in the number of people who identify with an anti-government belief system called the sovereign citizen

movement. This group is a loose network of individuals living across the U.S. who believe the government is illegitimate, amongst other unconventional ideas. The Federal Bureau of Investigation (FBI) has designated sovereign citizens as a domestic terrorist movement, and a growing threat to law enforcement.<sup>ii</sup> By some estimates, there are as many as 300,000 sovereigns in the U.S., and their numbers are likely to increase.<sup>iii</sup> For many of these individuals, paper-based tactics are used to strike back at government interference in their lives. Numerous websites sell how-to kits or offer to train subscribers on how to perpetrate filing schemes in exchange for large fees.

Most of these filings utilize tell-tale buzzwords and share common indicators, including:

- References to the Bible, the U.S. Constitution, U.S. Supreme Court Decisions, or foreign treaties
- Names written in all capital letters, or interspersed with colons
- Signatures followed by the words “under duress,” “Sovereign Living Soul”, or a copyright symbol
- Personal seals, stamps, or thumb prints in red ink or blood
- The words “accepted for value”
- Copies of personal documents, such as birth certificates or Social Security cards

According to the American Bar Association, the vast majority of all bogus UCC financing statements also share another important characteristic: They indicate the debtor is a transmitting utility.<sup>iv</sup> This term is used to refer to “any person who is primarily engaged in the railroad, street, railway or trolley bus business, the electric or electronic communications transmission of electricity, steam, gas, or water, or the provision of sewer service.”<sup>v</sup> Fraudulent filers, particularly sovereigns, use this designation in an attempt to ensure their financing statements remain indefinitely on file. Under UCC Section 9, transmitting utility filings do not lapse. This is a major contrast to most UCC financing statements, which unless continued by the secured party, will lapse after a period of five years from the date of filing.

In general, there are three main types of bogus filings: harassment filings, strawman filings, and authentication filings. It is important to understand the intent behind these submissions, so states can effectively deal with them. Learning to recognize the common indicators within these spurious claims can also be helpful for policymakers and those who work in state filing offices on the front lines of UCC transactions. All three types of spurious claims will be covered in the following section of this report.

### **Harassment Filings**

Sovereigns regularly file retaliatory, bogus financing statements and real property liens against government officials, corporations, and banks (or their employees) as a response to a perceived injustice. Judges, prosecutors, and public defenders are also frequently targeted. Although they are not legally effective, victims may spend years battling their false claims, and some may not even realize they have been targeted until they attempt to conduct a property transaction or open a line of credit.

Financing statements filed to harass a target victim often falsely indicate the “debtor” owes large sums of money to the filer or purported “secured party.” Harassment filings have become more common in the past decade as prison inmates have learned about these tactics and adopted them in large numbers. For example, a prisoner seeking retaliation against a government official may file an unauthorized financing statement claiming the official owes the prisoner millions of dollars.

### **Strawman Filings**

Under a complicated scheme known as “redemption theory,” sovereign citizens believe the federal government creates a “strawman” account at the U.S. Department of the Treasury representing the monetary worth of each citizen. An individual’s strawman account supposedly contains anywhere from \$600,000 to \$3 million. Sovereign citizens believe a UCC financing statement allows them to “secure an interest” in their strawman account and gain access to a secret account holding these funds. This process is sometimes referred to as “freeing money from the strawman.”<sup>vi</sup> A strawman filing will often include the same name for both secured party and debtor, with the name of the debtor (the strawman) spelled entirely in uppercase letters. The debtor name may also include the words “corporation” after it. The name of the secured party (the physical individual) is often spelled with initial capital letters only, and a comma or a semicolon before the surname (e.g. John-Robert: Doe).<sup>vii</sup>

### **Authentication Filings**

Aside from harassment and strawman claims, sovereign citizens sometimes submit fraudulent financing instruments in conjunction with bogus UCC filings to try and mislead third parties about the authenticity of the underlying documents.

## **The UCC and the Role of the Secretary of State's Office**

To understand why so many bogus or fraudulent liens are accepted for recording by state filing offices in the first place, it is important to highlight the UCC and its influence on the role of the Secretary of State's office. The UCC is a comprehensive model uniform act addressing most aspects of commercial law. The Uniform Law Commission and the American Law Institute are responsible for maintaining and revising its content.

Under Revised Article 9 of the code, Secretary of State offices typically serve as the central filing location for public notices of secured transactions. These public notices, called financing statements, indicate a commercial agreement between a debtor and a secured party.<sup>viii</sup> They are used by banks, mortgage companies, and other lending institutions to determine whether there are existing claims against the collateral of a prospective debtor.

### **The Limitations of the UCC Article 9 in Addressing Fraudulent Filings**

According to the uniform language of the UCC, the Secretary of State's office is limited to its role as a filing office for these public records. The office does not have the authority to verify the accuracy or the validity of documents when they are filed, even if they are blatantly fraudulent. If a financing statement is submitted with all the required information, the Secretary of State must record the document. In fact, the original text of Article 9 prohibits states from rejecting financing statements

unless specific grounds exist for this action. Even then, the reasons for rejection are limited to ministerial issues, such as failure to pay the proper fee, incomplete forms, or illegible writing.<sup>ix</sup>

Furthermore, the options available to a person named in an unauthorized financing statement are limited under the UCC. There are two main remedies to assist potential victims: an information statement and a termination statement. Formerly known as a correction statement, an information statement can be submitted to the filing office to show that a named debtor would like to amend the record. A termination statement affirms the unauthorized financing statement is not effective. The person named as a debtor may demand that the secured party file a termination statement, or if the secured party fails to act, the debtor himself/herself may submit one.<sup>x</sup>

Neither an information statement nor a termination statement provides the means to remove the bogus filing quickly or completely from the public record. In fact, the submission of an information statement does not actually invalidate the financing statement. Its only purpose is to provide public notice that the validity of the financing statement is in dispute.<sup>xi</sup> Although the filing of a termination statement will indicate in the public record that the unauthorized financing statement is not valid, it does not remove the financing statement from the registry. The UCC requires the financing statement (including the termination statement) to remain on record until at least one year after it lapses.<sup>xii</sup> However, while victims may file a termination statement to indicate a financing statement is invalid, potential secured parties doing an electronic records search may miss the fact that a termination statement has been filed.

It should be noted that while there are a number of limitations, UCC Revised Article 9 also permits a person named as the debtor in an unauthorized filing to seek injunctive relief, to include the collection of damages for financial harms brought about by the claim.<sup>xiii</sup> Specifically, individuals who submit unauthorized financing statements may be subject to a \$500 penalty per each bogus filing, and an additional \$500 penalty for each refusal to file a termination statement.<sup>xiv</sup>

### **NASS/IACA Task Force Recommendations and New Approaches**

The drafters of UCC Revised Article 9 have acknowledged the challenges in dealing with bogus UCC filings, as well as the code's inability to provide a completely satisfactory response to the problem. The drafters' comments have pointed to judicial remedies and criminal penalties as the most effective and least burdensome approaches.<sup>xv</sup>

As a result, the NASS/IACA Bogus Filings Task Force devised its 2006 recommendations around this notion.<sup>xvi</sup> One recommendation encouraged states to allow individuals named as debtors in an unauthorized financing statement to file a motion for judicial review of the filing without paying a fee. After issuing a decision based solely on the documentation submitted by the relevant parties, the court could then order the filing office to remove fraudulent financing statements from the record. Another recommendation encouraged states to adopt laws that would make it a criminal felony to file a financing statement for the purpose of harassment, while still another focused on civil penalties. Under the recommendation on civil penalties, states were urged to take steps that would allow a person to seek damages, court costs, attorney's fees, related expenses, and an injunction against anyone who files a financing statement for the purpose of harassing or defrauding someone.

While several states have adopted laws conforming to these recommendations, the significant increase in fraudulent filings during the past few years has required some states to consider their

own Article 9 legislative initiatives. Many of these new laws and legislative proposals have a direct impact on Secretary of State offices and how they handle the filing of UCC records.

## State Approaches to Fraudulent Filings

When the NASS/IACA Bogus Filings Task Force Recommendations came up for renewal in July 2011, Secretaries of State decided the problem of fraudulent filings had become so widespread and prolific, that new approaches were needed. Their decision was based on shared concerns that the NASS/IACA recommendations continued to place significant burdens on victims, as well as the courts, which have experienced some delays and backlogs due to fraudulent filing cases. Instead, NASS members decided to examine alternative approaches that would allow state filing offices to play a more active role in subverting these filings, either by expanding the authority of state filing offices so they can refuse to accept bogus UCC financing statements, or by allowing the offices to quickly and inexpensively terminate financing statements and wipe them from the record under certain conditions.

Several states have already adopted non-uniform approaches to this problem. In some cases, state Article 9 amendments impose additional duties on the office of the Secretary of State, and in some cases, it is the Secretary of State that must determine whether a contested record was filed without authorization.

Generally speaking, the state laws addressing this issue can be categorized into four different approaches: 1) pre-filing administrative discretion, 2) post-filing administrative relief, 3) post-filing expedited judicial relief, and 4) enhanced criminal/civil penalties. Each of these approaches is discussed in this section of the report, while summaries of the relevant state laws are provided in Appendices I – IV. In states where the Secretary of State's office does not handle UCC filing duties, the report focuses on the equivalent state agent.<sup>xvii</sup>

### Pre-Filing Administrative Remedy

A pre-filing administrative remedy gives the Secretary of State's office broader discretion in rejecting a materially false or fraudulent UCC record submitted for filing. At least 27 states currently have some type of statutory pre-filing remedy (see [Appendix I](#)), although the scope of the filing office's authority can vary from state to state. For example, in Nebraska, the filing office may reject a financing statement that has the same name listed as the debtor and secured party. In North Carolina, the filing office may reject a financing statement outside the scope of the law, intended for an improper purpose, or intended to harass someone. In Alabama, the filing office may reject a financing statement that appears fraudulent, or has the same name listed as the debtor and secured party. In Texas, the Secretary of State, in consultation with the Attorney General, may reject a financing statement that appears fraudulent. In Minnesota, a filing officer may refuse to accept a financing statement if they reasonably believe the record was filed with the intent to harass or defraud someone, or for another unlawful purpose.

For a pre-filing remedy to be most effective, it must be comprehensive enough to cover the various types of bogus UCC filings. While some information can be helpful when identifying a strawman filing (e.g. same name for secured party and debtor), harassment and authentication filings require a more general standard. Thus, a comprehensive pre-filing remedy likely requires the filing office have broad authority to reject a financing statement.

South Carolina has taken this approach, adopting a statute defining submissions that can be rejected by the Secretary of State's office given any of the following conditions:

[The financing statement] is not created pursuant to the UCC; is intended for an improper purpose, such as to hinder, harass, or otherwise wrongfully interfere with any person; names the same person as both debtor and secured party; describes collateral not within the scope of the UCC; or is being filed for a purpose other than a transaction within the scope of the UCC.<sup>xviii</sup>

The obvious benefit of a pre-filing remedy is it can prevent a bogus financing statement from being filed in the first place. As a result, a person targeted by a harassment filing does not have to spend the time and resources often required to remove the filing from the public record, and they are spared the potential negative impact that the bogus financing statement could have on their credit, which may linger even after a filing has been expunged from the record. As stewards of public records, Secretaries of State believe this approach also maintains integrity by not allowing fraudulent information to enter into the public record.

The primary challenge states face when implementing a pre-filing remedy is the limitation of resources in the state filing office. A pre-filing remedy requires active review of filings that come before the office daily, both in person, as well as electronically. Staff must be trained to review incoming filings for signs of fraud according to the law. If an electronic filing system cannot help to flag filings for this type of information, the work must be carried out by staff.

### **Post-Filing Administrative Remedy**

A post-filing administrative remedy gives the filing office the authority to take corrective action with respect to existing UCC financing statements. At least 22 states have a law authorizing this type of remedy (see [Appendix II](#)). Once again, the designation of an individual debtor as a transmitting utility typically provides grounds for cancelling a financing statement and/or removing it from the public record. Laws in other states are broader. In Montana and North Carolina, for example, the filing office may cancel and remove a financing statement from the record that has been determined to have been fraudulently, wrongfully, or improperly filed. In Maine, the Secretary of State may remove a record that has been filed if they have reasonable cause to believe the record is materially false or fraudulent.

A post-filing remedy can be most effective if it provides the filing office with the authority to remove a bogus filing from the record. As part of this process, the state may be required to provide some type of due process to the relevant parties. In Montana, the filing office must give the parties notice, and provide an opportunity to respond prior to removing a filing from the records. In West Virginia, the Secretary of State may commence an administrative proceeding to remove a filing from the record after publishing notice of the proceeding in the state register.

By authorizing the filing office to remove a bogus financing statement from the record, victims of harassment filings do not have to seek removal of the filing through the courts, which can reduce costs to both victims and the state, speed up the termination and removal process, and provide a less complicated means for addressing fraudulent filings.

The main challenge posed by this approach is that the victim of the harassment filing may only find out about this fraudulent filing after encountering trouble securing credit or conducting some kind of property-related transaction.

### **Post-Filing Expedited Judicial Relief**

Post-filing expedited judicial relief authorizes corrective action on an existing financing statement through an accelerated judicial review process, with no fee required to bring about the action (see [Appendix III](#)). These laws are very similar to the judicial remedy proposed by the NASS/IACA Bogus Filing Task Force. At least 10 states have adopted this type of law, and others have considered them in recent years. In most cases, state law authorizes a person who believes they are named as the debtor on a fraudulent financing statement to file a motion for expedited judicial review of the filing, and the court may order that the filing be removed from the records.

Victims of a harassment filing are provided with a faster, less costly means for obtaining a declaratory judgment or expungement order from the courts to have the filing removed.<sup>xx</sup> In some states, this approach has significantly improved the timeframe for resolving questions about a disputed filing and streamlined the legal process for dealing with such records. For example, targets of bogus filings in Minnesota can now resolve the situation in a matter of weeks or months, instead of years.

The benefit of this approach seems to be that the court system continues to bear responsibility for handling these issues, which means that the Secretary of State's office does not need to have additional resources, training, and staffing to provide a faster, less costly solution.

One of the drawbacks of expedited judicial relief is it still places significant burdens on the victims. Although there may not be a fee for filing a motion for expedited judicial review, it is still a court action, and a victim will often need to hire an attorney and pay the associated costs. Since this remedy also places burdens on the courts, they may be unwilling to support it.

### **Post-Filing Criminal/Civil Penalties**

Criminal and civil penalties are designed to deter and punish those who attempt to file spurious claims using UCC financing statements. At least 18 states have laws that make it a crime to fraudulently submit a filing (see [Appendix IV](#)). Typically, the first offense is a misdemeanor crime, while subsequent offenses are charged as a felony. However, a few states, including Minnesota and Texas, make it an outright felony to attempt to harass someone using a fraudulent financing statement.

At least 16 states have laws authorizing civil penalties. Many of these laws permit victims to seek damages, court costs, attorney's fees, related expenses, and injunctions. In a few cases, fines may also be imposed. In West Virginia, the fine is \$500 per fraudulent filing, while a fraudulent filer in Georgia can be charged up to \$10,000 for their offense.

Criminal and civil penalties can help prevent the filing of bogus financing statements and are an important part of a comprehensive approach to the bogus filing problem. However, penalties alone may not provide adequate relief to the victims.

## Conclusion

As long as sovereign citizens and other members of fringe anti-government groups continue to thrive, state filing offices will need to consider laws and policies that deter and defend against bogus UCC filings while maintaining the “open drawer” thrust behind Revised Article 9. Secretaries of State and other state policymakers must decide how they can best equip state filing offices, law enforcement, and members of the public to mitigate the impacts of fraudulent filings and harassment liens. State solutions must cover a number of problematic filings, including harassment filings, strawman filings, and deceptive authentication filings.

Several pre-filing and post-filing approaches are currently available, along with the NASS/IACA approach that includes strong criminal and civil penalties for those who file bogus UCC claims. The role and authority of Secretaries of State are important aspects of this work. For states that seek to expand the authority of a filing office, budgets may need to be increased to cover additional staffing, training, and other additional costs associated with any changes in the process. Additionally, as states consider the approaches discussed in this document, they continue to explore other ways to prevent filings. In Ohio for example, the state’s UCC system includes a UCC Watchlist that allows people to monitor UCC records and get immediate notification if someone submits a UCC filing listing them as a debtor.

Moving forward, it remains to be seen how imposing a new investigative duty on Secretaries of State will impact the number of fraudulent UCC filings in states that have taken this approach. Moreover, it is unclear whether the adoption of non-uniform legislation impacts the reliability of state filing systems. These issues will undoubtedly be important discussion topics for the members of NASS.

In the meantime, it is clear to the nation’s Secretaries of State that states are indeed interested in doing more to assist the targets of fraudulent UCC filings and counterfeit claims. Costly, time-consuming remedies are not providing adequate relief for these citizens, and the fallout is putting a strain on backlogged courts and busy state filing offices. Even where an expedited judicial review is available, the burden of litigation is still on the victims. A remedy that allows state filing offices to subvert a bogus filing and/or allows for its quick removal from the record, in conjunction with strong criminal and civil penalties, will likely be the most effective way for states to alleviate the burdens on bogus filing victims.

## Appendix I: State Pre-Filing Administrative Remedies

### **Alabama**

The filing office may reject a UCC filing that appears fraudulent on its face, and a filing that identifies the debtor and secured party as the same person. If the secured party can demonstrate that a rejected filing should have been accepted, the filing office must file the document with an effective date of the time that it was originally submitted for filing.<sup>xx</sup>

### **Arizona**

The Secretary of State may refuse to perform a service or refuse a filing based on a reasonable belief that the service or filing is being requested for an unlawful, illegitimate, false or fraudulent purpose or is being requested or submitted in bad faith or for the purpose of harassing or defrauding a person or entity.<sup>xxi</sup>

### **Arkansas**

A filing officer may review a financing statement to determine if it should be refused for filing as fraudulent. When reviewing a financing statement, the filing officer must consider several factors, including: whether the statement is authorized under the UCC; cites performance or nonperformance of official duties by a current or former government officer or employee; identifies the secured party and debtor as being the same person; is remitted by or on behalf of an inmate in a correction facility without being accompanied by a sworn statement; is being filed for a purpose other than a transaction within the scope of the UCC; or the text of the financing statement contains language indicative of past filings.

If filing official acting in good faith has reason to believe the financing statement is filed for a fraudulent purpose, to promote or conduct an illegitimate object or purpose, or for the purpose of defrauding or harassing a person or entity, the filing official must provide the reason to refuse the filing to the director of the Business and Commercial Services Division and the general counsel for the Secretary of State. If the director and general counsel concur, the filing office must provide the secured party with notice of the refusal to file the financing statement. The notice must state that the secured party has 30 days to submit documentation as to why the financing statement should not be refused for filing. If the secured party fails to provide the required documentation, the filing office may refuse the record for filing.<sup>xxii</sup>

### **California**

The Secretary of State may refuse to perform a service or refuse a filing based on a reasonable belief that the service or filing is being requested for an unlawful, false, or fraudulent purpose, to promote or conduct an illegitimate object or purpose, or is being requested or submitted in bad faith or for the purpose of harassing or defrauding a person or entity.<sup>xxiii</sup>

### **Idaho**

The filing office may reject any UCC financing statement where the debtor and the secured party appear to be the same individual. The filing office may require reasonable proof from the secured party that an individual debtor is in fact a transmitting utility. The Secretary of State may petition the courts to delete unauthorized filings.<sup>xxiv</sup>

## **Illinois**

A filing office may reject a financing statement if the filing office has reason to believe that debtor does not meet the definition of a transmitting utility, the transaction does not meet the definition of a manufactured-home transaction, the transaction does not meet the definition of a public-finance transaction, or the financing statement is unauthorized, invalid, or filed with the intent to harass or defraud. The Secretary of State may refuse to accept a record for filing on these grounds only if the refusal is approved by the Department of Business Services of the Secretary of State and the General Counsel to the Secretary of State.

A secured party who believes in good faith a record rejected by the filing office was not in violation of applicable law may file an action to require that the record be accepted. If a court determines a rejected record should be accepted, the Secretary of State must file the record and include a notice indicating that the record was filed pursuant to its initial filing date.<sup>xxv</sup>

## **Indiana**

The Secretary of State may refuse to accept a financing statement for filing or recording if it is not required or authorized to be filed or recorded with the Secretary of State, or the Secretary of State has reasonable cause to believe the financing statement is materially false or fraudulent. A fraudulent financing statement that the Secretary of State may refuse to accept includes any financing statement that has the same name listed as both the debtor and the secured party, any financing statement that identifies an individual debtor as a transmitting utility, and any financing statement that is determined to be intended for an improper purpose, such as hindering, harassing, or wrongfully interfering with another person or entity. A fraudulent financing statement also includes a statement that is filed without the consent or participation of the obligor named in the financing statement, the person named in the financing statement as debtor, and the owner of collateral described or indicated in the financing statement; a financing statement that is filed by consent of an agent, a fiduciary, or another representative of the secured party of record without the consent of the secured party; and any financing statement that is forged. The Secretary of State does not have a duty to inspect, evaluate, or investigate a financing statement that is presented for filing or recording.<sup>xxvi</sup>

## **Kentucky**

Upon approval of the Secretary of State, a filing office may refuse to accept a financing statement if it is evident from the contents of the record the person filing the record is not authorized to do so. If the filing office refuses to accept the record, the office must notify all parties. The secured party on a financing statement that is refused may request from the Secretary of State an expedited administrative review, or bring an action against the Secretary of State seeking a determination the financing statement was filed by a person entitled to do so.<sup>xxvii</sup>

## **Maine**

Notwithstanding any other provision of law, if a person presents a record to the Secretary of State for filing or recording, the Secretary of State may refuse to accept the record for filing or recording if the record is not required or authorized to be filed or recorded with the Secretary of State or the Secretary of State has reasonable cause to believe the record is materially false or fraudulent. This subsection does not create a duty upon the Secretary of State to inspect, evaluate or investigate a record that is presented for filing or recording. If the Secretary of State refuses to accept a record for

filing or recording, the person who presented the record to the Secretary of State may commence an action in or apply for an order from the Superior Court to require the Secretary of State to accept the record for filing or recording.<sup>xxviii</sup>

### **Michigan**

The Secretary of State may reject any filing the Secretary of State has reason to believe is false or fraudulent; asserts a claim against a current or former federal, state, or local official or employee related to the performance of that person's duties, unless the filer holds a security agreement or court judgment; indicates that the secured party and the debtor are substantially the same; or indicates that the individual debtor is a transmitting utility.

If the Secretary refuses to accept a record for filing, the person attempting the filing may seek a court order requiring the Secretary to accept the filing. If the court orders the record to be filed, it is effective as filed from the initial filing date, except against a person who purchases the collateral in reasonable reliance upon the absence of the filing from the record.<sup>xxix</sup>

The Secretary of State must provide written notice to individuals named as a debtor in a financing statement and provide them with a copy of the financing statement. The notice must include the remedies that are available if the debtor believes the financing statement is fraudulent.<sup>xxx</sup>

### **Minnesota**

Filing does not occur with respect to a record that the filing office refuses to accept because the office reasonably believes the record was communicated or caused to be communicated with the intent to harass or defraud the person identified as the debtor, or for another unlawful purpose. The office has no duty to form a belief as to whether a record was communicated or caused to be communicated with the intent to harass or defraud the person identified as the debtor or for another unlawful purpose, and has no duty to investigate or ascertain facts relevant to whether the intent or purpose was present.<sup>xxxi</sup>

### **Mississippi**

The filing office rejects an initial financing statement or an amendment if it believes in good faith that the record was communicated to the filing office in violation of applicable law. The filing office may also refuse to accept a filing if it lists the same person as debtor and secured party. Filers will be notified of this rejection via electronic mail.

### **Missouri**

Filing does not occur with respect to a record that a filing office refuses to accept because the Secretary of State has reasonable cause to believe the record is materially false or fraudulent, based on factors such as whether the debtor and the secured party are substantially the same person, the individual debtor is a transmitting utility, or whether the collateral described is within the scope of this chapter, that the record is being filed for a purpose other than a transaction is within the scope of this chapter. This includes a record that asserts a claim against a current or former employee or officer of a federal, state, county, or other local governmental unit that relates to the performance of the officer's or employee's public duties. A document, instrument, or record shall be presumed to be materially false or fraudulent if the document, instrument, or record is filed by an offender or on behalf of an offender. This presumption may be rebutted by providing the Secretary of State the original or a copy of a sworn document signed by the obligor, debtor, or owner of the property

designated as collateral stating that the person entered into a security agreement with the offender and authorized the filing of the instrument.<sup>xxxii</sup>

### **Montana**

If the filing office has reason to believe a lien submitted for filing is improper or fraudulent, it may reject the submission after giving notice and an opportunity to respond to the parties.<sup>xxxiii</sup>

### **Nebraska**

A financing statement will be rejected if it lists the same person as debtor and secured party.<sup>xxxiv</sup>

### **Nevada**

Filing does not occur with respect to a record that a filing office refuses to accept because... the record lists a public official of a governmental unit as a debtor and the public official has not authorized the filing of the information in an authenticated record.<sup>xxxv</sup> The Secretary of State may adopt regulations prescribing procedures to prevent the filing in his or her office of: false, fraudulent, fraudulently altered or forged documents; documents that contain a false statement of material fact; documents that are filed in bad faith or for the purpose of harassing or defrauding a person.<sup>xxxvi</sup>

### **New Jersey**

Filing does not occur with respect to a record that a filing office refuses to accept because the record is not required or authorized to be filed or recorded with the filing office; the record on its face is being filed or recorded for a purpose outside the scope of applicable law; the collateral described in the record is not within the scope of this chapter; the filing office reasonably believes the filer is attempting to file under a fictitious name with the intent to harass or defraud the person identified as the debtor; the filing office reasonably believes the record is materially false or fraudulent because; the record asserts a claim against a current or former government officer or employee and relates to the performance or non-performance of the officer's or employee's public duties; the record indicates that the debtor and the secured party are the same; the record indicates that an individual is a transmitting utility; or the filer is incarcerated.<sup>xxxvii</sup>

### **North Carolina**

The Secretary of State may refuse to accept a financing statement the Secretary determines is not created pursuant to the UCC, or is otherwise intended for an improper purpose, such as to hinder, harass, or otherwise wrongfully interfere with any person.<sup>xxxviii</sup>

### **Ohio**

The Secretary of State may refuse to accept a document for filing or recording if the Secretary has reasonable cause to believe that the document is materially false or fraudulent. If the Secretary of State refuses to accept a document, the person attempting to file the document may seek a court order requiring the Secretary of State to accept it for filing.<sup>xxxix</sup>

### **Oregon**

The filing office may not accept a claim of encumbrance on the property of a federal or state official or employee based on the performance or nonperformance of their duties. The filing office may refuse to accept a financing statement that on its face reveals it is being filed for a purpose not within the scope of the UCC, including factors such as whether the debtor and the secured party are

the same person, or whether the collateral described is within the scope of the UCC.<sup>xl</sup> If the Secretary of State refuses to accept a record for filing based on this provision, the secured party may contest the refusal by requesting a hearing before the Secretary of State within 20 days. If the Secretary of State determines the record should have been filed, the filing office must index the record as of the date it was originally presented for filing.<sup>xli</sup>

### **Pennsylvania**

The Department of State may reject a document for filing if the Department reasonably believes the document is being filed fraudulently, or may be used to accomplish a fraudulent, criminal, or unlawful purpose.<sup>xlii</sup>

### **South Carolina**

The Secretary of State may refuse to accept a financing statement the Secretary of State determines is not created pursuant to the UCC, or is otherwise intended for an improper purpose, such as to hinder, harass, or otherwise wrongfully interfere with any person. The Secretary of State may also refuse to accept a financing statement that names the same person as both debtor and secured party, describes collateral not within the scope of applicable law, or is being filed for a purpose other than a transaction within the scope of the UCC.<sup>xliii</sup>

### **Texas**

If the Secretary of State believes a document filed to create a lien is fraudulent, the Secretary must request the prospective filer provide additional documentation supporting the existence of the lien, and request the assistance of the attorney general in determining whether the proposed lien is fraudulent. For purposes of this provision, a document is presumed to be fraudulent if is filed by or on behalf of an inmate in a correctional facility, unless it is accompanied by a sworn, notarized statement signed by the debtor acknowledging that the person entered into a security agreement with the inmate and authorized the filing of the lien.<sup>xliv</sup>

### **Utah**

Filing does not occur with respect to a record that a filing office refuses to accept because, in the case of an initial financing statement or an amendment that provides a name of a debtor that was not previously provided in the financing statement to which the amendment relates, the record was not communicated to the filing office by an established filer and the filing office reasonably believes the record was caused to be communicated to the filing office with the intent to harass or defraud the person identified as debtor or for another unlawful purpose. Except as otherwise provided, the filing office has no duty to form a belief as to whether a record was caused to be communicated with the intent to harass or defraud the person identified as debtor or for another unlawful purpose and has no duty to investigate or ascertain facts relevant to whether the intent or purpose was present.<sup>xlv</sup>

### **Virginia**

The filing office must refuse to accept a financing statement if it appears to the office that the filing is for an improper purpose, such as to hinder, harass, or otherwise wrongfully interfere with a person or promote or conduct an illegitimate object or purpose; is materially false or fraudulent; or indicates the debtor and the secured party are substantially the same person or that an individual debtor is a transmitting utility.<sup>xvi</sup>

### **Washington**

The UCC filing office may refuse to accept a document for filing if it appears to be fraudulent or not within the scope of UCC. If the filing office refuses to accept a document, the filer may contest the decision by filing a petition for review in the Superior Court. The process is provided for in the Administrative Procedure Act which establishes the exclusive means of judicial review of agency action.

### **West Virginia**

Filing does not occur with respect to a record that a filing office refuses to accept because in the case of an initial financing statement or an amendment the filing office believes in good faith the record was communicated to the filing office in violation of applicable law (see Appendix IV).<sup>slvii</sup>

## Appendix II: State Post-Filing Administrative Remedies

### **Alabama**

A recording official may nullify or expunge from an official record a false or fraudulent lien or instrument. A person or entity whose rights are affected by the filing of a lien or other instrument may petition a recording official to nullify or expunge the filing. A party may appeal the decision of the recording official through the courts.<sup>xlviii</sup>

### **Arkansas**

An individual may file an affidavit with the filing office stating a financing statement was filed by a person not entitled to do so. If an affidavit is filed, the filing office may file a termination statement with respect to the financing statement. The office must provide notice to each secured party identified in the financing statement that a termination statement has been filed. A secured party may bring an action within 20 days after the termination statement is filed against the individual who filed the affidavit seeking determination as to whether the financing statement was filed by a person entitled to do so.<sup>xlix</sup>

### **Illinois**

A person named in a financing statement that the person believes was unauthorized, invalid, or filed with the intent to harass or defraud, may file an affidavit with the Secretary of State. The Secretary of State may terminate the record if the Secretary has a reasonable basis for determining the record is in violation of applicable law. The Secretary of State may initiate an administrative action with regard to a filing if the Secretary has reason to believe it is in violation of applicable law. The Secretary of State may give heightened scrutiny to a record that indicates the debtor is a transmitting utility or that indicates the transaction to which the records relates is a manufactured-home transaction or a public-finance transaction. A secured party who believes in good faith a record communicated to the filing office was not in violation of applicable law may file an action to require that the record be reinstated.<sup>1</sup>

### **Iowa**

A person identified as the debtor in a filed financing statement may deliver to the filing office an affidavit stating the person believes the filing was not authorized to be filed and was communicated or caused to be communicated with the intent to harass or defraud the affiant. The office may reject an affidavit that is incomplete or the office believes was delivered with the intent to harass or defraud the secured party. If an affidavit is filed, the office must promptly file a termination statement with respect to the financing statement identified in the affidavit. The filing office must send to the secured party of record for the financing statement to which the termination statement relates a notice stating that the termination statement has been filed and will become effective 90 days after filing. If a secured party believes in good faith the filed record identified in an affidavit was authorized to be filed and was not caused to be communicated to the filing office with the intent to harass or defraud, the affiant may request that the filing office conduct an expedited review of the record before the termination statement takes effect, or file an action against the filing office seeking reinstatement of the financing statement to which the filed record relates.<sup>11</sup> For a Trusted Filer, a termination statement is not filed unless, after certified mail notice is sent to the secured party and the affiant, the determines that the financing statement is not valid.

### **Maine**

The Secretary of State may remove a record that has been filed or recorded with the Secretary of State if the Secretary of State determines the record was filed or recorded erroneously because the record was not required or authorized to be filed or recorded with the Secretary of State or the Secretary of State has reasonable cause to believe that the record is materially false or fraudulent. If the Secretary of State removes a record that was filed or recorded, the Secretary of State shall immediately notify the person who presented the record for filing or recording. If the Secretary of State removes a record that was filed or recorded, the person who presented the record to the Secretary of State may commence an action in or apply for an order from the Superior Court to require the Secretary of State to reinstate the filing or recording from the original date of filing or recording. If the court determines the record is appropriate for filing or recording, it shall order the Secretary of State to accept the record for that purpose or require the Secretary of State to reinstate the record from the original date of filing or recording.<sup>lii</sup>

### **Michigan**

A person identified as a debtor in a financing statement may file an affidavit with the Secretary of State stating the financing statement is fraudulent. On receipt of the affidavit, the Secretary of State must terminate the financing statement. The Secretary of State must notify the filer of the financing statement that it has been terminated. If the filer believes in good faith that the financing statement was legally filed and is not fraudulent, the filer may file an action to reinstate the financing statement.<sup>liii</sup>

A person identified as a debtor in a financing statement may file an action with a court of competent jurisdiction against the person that filed the financing statement requesting appropriate equitable relief or damages, including but not limited to, an order declaring the financing statement ineffective and ordering the Secretary of State to terminate the financing statement, and reasonable attorney fees. As part of their orders, some courts have required the Secretary of State to expunge the financing statement record from its searchable database.

If an information statement is filed with the Secretary claiming a previously filed record was wrongfully filed, the Secretary must determine whether it was wrongfully filed. The Secretary may require the person who filed the information statement or the secured party to provide any relevant additional information. If the Secretary finds that the record was wrongfully filed, the Secretary must terminate the record, and notify the secured party.<sup>liv</sup>

### **Minnesota**

A person identified as the debtor in a filed financing statement may deliver to the filing office an affidavit stating the person believes the filing was not authorized to be filed and was communicated or caused to be communicated with the intent to harass or defraud the person identified as the debtor. The office may reject an affidavit that is incomplete or the office believes was delivered with the intent to harass or defraud the secured party. If an affidavit is filed and not rejected, the office must promptly file a termination statement with respect to the financing statement identified in the affidavit. The termination statement filed under this subsection is not effective until 20 days after the date it is filed. If a secured party believes in good faith the filed record identified in an affidavit was authorized to be filed and was not communicated or caused to be communicated to the filing office

with the intent to harass or defraud, the secured party may request the filing office conduct an expedited review of the record before the termination statement takes effect, or commence an action against the filing office seeking reinstatement of the filed record.<sup>lv</sup>

### **Mississippi**

No person shall file a false record they know or reasonably should know is being filed with the intent to harass or defraud the person identified as debtor in the record or any other person; is not authorized or permitted under applicable law; is not related to a valid existing or potential commercial or financial transaction, an existing agricultural or other lien, or a judgment of a court of competent jurisdiction.

The Secretary of State may initiate a review of a record presented for filing or a filed record if the Secretary of State receives an information statement filed by the debtor with the Secretary of State alleging the record was communicated to the filing office in violation of applicable law or the Secretary of State has reason to believe, from information contained in the record or obtained from the person that communicated the record to the filing office, that the record was communicated to the filing office in violation of applicable law.

Upon initiating the review, the Secretary of State shall request additional documentation from the parties supporting the effectiveness of the record. The Secretary of State may terminate the record effective 30 days after the first request for additional documentation is sent if the office has a reasonable basis for concluding the record was communicated to the filing office in violation of applicable law.

The Secretary of State may give heightened scrutiny to a record when: the record asserts a claim against a current or former employee or officer of a federal, state, county, or other local governmental unit that relates to the performance of the officer's or employee's public duties, and for which the filer does not hold a properly executed security agreement or judgment from a court of competent jurisdiction; the record indicates the debtor and the secured party are substantially the same; the debtor is a transmitting utility; or the transaction to which the record relates is a public-finance transaction. A secured party of record who believes in good faith the record was not communicated to the filing office in violation of applicable law may file a court action to require the Secretary of State to accept or reinstate the record.<sup>lvi</sup>

### **Missouri**

If an information statement filed with the Secretary of State alleges that a previously filed record was wrongfully filed, the Secretary of State shall determine whether the contested record was wrongfully filed. If the Secretary of State finds that the record was wrongfully filed, the Secretary of State shall terminate the record and the record shall be void and ineffective.<sup>lvi</sup>

### **Montana**

If the filing office receives a complaint that a filed lien is improper or fraudulent, the filing office may remove the filing from the existing records after giving both parties notice and an opportunity to respond.<sup>lvi</sup>

### **Nebraska**

A person identified as the debtor in a financing statement may file an affidavit with the filing office

stating the financing statement was filed by a person not entitled to do. The filing office may file a termination statement with respect to the financing statement identified in the affidavit. The filing office must send notice to each secured party identified in the financing statement that a termination statement has been filed. The termination statement takes effect 30 days after it is filed, except that a secured party identified in the financing statement may bring an action within 20 business days against the individual who filed the affidavit seeking a determination as to whether the financing statement was filed by a person entitled to do so.<sup>lxix</sup>

### **New York**

Upon conviction of a crime where the defendant intentionally filed a false financing statement the court must file a certificate with the Secretary of State certifying that a judgment of conviction has been entered against the defendant who was listed as the secured party.<sup>lx</sup>

### **North Carolina**

When a person files a correction statement alleging a previously filed record was wrongfully filed and should have been rejected, the Secretary of State must determine whether the assertions are correct. In order to make this determination, the Secretary of State may require the person filing the correction statement and the secured party to provide any additional relevant information requested by the Secretary of State. If the Secretary of State finds the record was wrongfully filed and should have been rejected, the Secretary of State must cancel the record and it will be void and have no effect.<sup>lxii</sup>

### **Oregon**

If a filing of encumbrance has been made against a federal or state official or employee based on the performance or nonperformance of their duties, a sworn notice may be given to the office which shall clear title to the property. An expedited show cause order for judicial relief may be filed and shall result in the invalid encumbrance being stricken from the record.

### **Pennsylvania**

The Department of State may conduct an administrative hearing to determine if a financing statement was fraudulently filed. A financing statement is fraudulent if no rational basis exists entitling the person to file the financing statement, and it appears that the person filed the initial financing statement with the intent to annoy, harass, or harm the debtor. If the Department determines that the financing statement is fraudulent, and no appeal is filed, the Department must file a correction statement indicating that the financing statement was found to be fraudulent and may be ineffective. If the decision is appealed and the court affirms the decision, the correction statement must indicate this.<sup>lxiii</sup>

### **South Carolina**

A person may file an information statement alleging that a previously filed record was filed wrongfully and that it should have been rejected. The Secretary of State shall determine if the contested record was filed wrongfully and should have been rejected. If the Secretary of State finds that the record was filed wrongfully and should have been rejected, the Secretary of State shall cancel the record and it is void and of no effect.<sup>lxiii</sup>

### **Tennessee**

A public official identified as a debtor in a filed financing statement may file an affidavit with the Secretary of State containing a statement that the affiant believes that the record was filed without any reasonable basis or legal cause. The office must notify the secured party that the affidavit was filed, and the secured party may file a petition with the office for review by an administrative judge within 20 days of receiving notice.<sup>lxiv</sup>

Upon conviction for an offense pursuant to applicable state law (see Appendix IV) any court having or exercising circuit court jurisdiction may order the removal from any record the lien or document evidencing an encumbrance, and order the document be void and of no legal effect, and, if so ordered, the court shall cause the removal of any cloud on a title that may have arisen because of the document.<sup>lxv</sup>

### **Texas**

A person identified as a debtor in a financing statement that the person believes was not permitted to be filed or was otherwise filed in violation of law may file an affidavit stating the impermissibility of the statement with the filing office. A person who files an affidavit shall send each secured party of record a written notice of the person's intention to file the affidavit. On acceptance of an affidavit, the filing office shall promptly file a termination statement with respect to the financing statement. A secured party of record identified in a financing statement for which a termination statement has been filed may bring an action seeking a determination of whether the person who filed the financing statement was entitled to file the statement. If a court determines that the financing statement was filed by a person entitled to file the statement, the termination statement shall immediately become ineffective and the filing office shall promptly file an amendment to the financing statement indicating that it has been reinstated.<sup>lxvi</sup>

### **Utah**

A person identified as a debtor in a filed financing statement may file an affidavit with the filing office stating the affiant believes the record was not authorized and was caused to be communicated to the filing office with the intent to harass or defraud the affiant. Upon receipt of the affidavit, the filing office must promptly file a termination statement with respect to the financing statement, and notify the secured party of record the termination statement was filed and will become effective 14 days after filing. If the secured party believes in good faith the record was authorized and filed with the intent to harass or defraud, the secured party may request the filing office review the filed record, or file an action against the filing office seeking reinstatement of the financing statement.<sup>lxvii</sup>

### **Virginia**

If the filing office becomes aware a record may have been wrongfully filed because it should have been rejected, the filing office may review the record and relevant circumstances and, if it determines the record was wrongfully filed and should have been rejected (as provided under applicable law requiring refusal of a filing – see Virginia pre-filing remedy above), the record shall be deemed void and ineffective; and the filing office shall remove the record from the index and communicate the foregoing to the person that presented the wrongfully filed record and to other persons, as appropriate.<sup>lxviii</sup>

### **Washington**

The UCC filing office may remove a financing statement from the record if it appears to be fraudulent or not within the scope of UCC. If the filing office removes a document, the filer may contest the decision by filing a petition for review in the Superior Court. The process is provided for in the Administrative Procedure Act which establishes the exclusive means of judicial review of agency action.

### **West Virginia**

A person identified as a debtor in a filed record the person believes was caused to be communicated to the filing office in violation of applicable law (see Appendix IV) may file an affidavit with the Secretary of State. Upon receipt of the affidavit or upon administrative action by the Secretary of State, the Secretary of State shall request from the parties additional documentation received supporting the effectiveness of the record. The Secretary of State may initiate an administrative with regard to a filed record if the Secretary of State has reason to believe, from information contained in the record or obtained from the person who communicated the record to the filing office, that the record was communicated to the filing office in violation of applicable law. The Secretary of State may give heightened scrutiny to a record that indicates the debtor is a transmitting utility or that indicates the transaction to which the record relates is a manufactured home transaction or a public finance transaction. The Secretary of State shall promptly communicate to the secured party of record a notice of the termination of a record. A secured party of record who believes in good faith the record was not communicated to the filing office in violation of applicable law may file an action to require that the record be reinstated by the filing office<sup>lxix</sup>

## Appendix III: State Post-Filing Expedited Judicial Relief

### **Colorado**

Any person who believes a spurious lien or document has been filed against the person's property may seek a court order declaring the lien invalid. The person who filed the document will have up to 20 days to appear before the court and show cause why the document should not be declared invalid. If the person fails to appear, the lien will be declared invalid and released. If, following a hearing, the court finds that the document is spurious, it must issue an order releasing the spurious document, and it must award costs, including attorney's fees, to the person who brought the action.<sup>lxx</sup>

### **California**

A public officer or employee whose property is subject to a false lien or other encumbrance may petition the court for an order directing the person claiming the lien or encumbrance to appear before the court at a hearing and show cause why the lien or encumbrance should not be stricken. The hearing date must allow adequate time for notice. If the court finds that the lien or encumbrance is false, it may issue an order striking and releasing the lien or encumbrance and may award costs and reasonable attorney fees to the petitioner.<sup>lxxi</sup>

### **Connecticut**

A person identified in a financing statement may petition the Tax and Administrative Appeals Session of the Superior Court to invalidate the record when it was falsely filed or amended. The court must review the petition and determine whether cause exists to doubt the validity of the record. Upon a determination that such cause exists, the court must, within 60 days, hold a hearing to determine whether to invalidate the record or grant any other relief deemed appropriate by the court.<sup>lxxii</sup>

### **Indiana**

A person who believes a financing statement is fraudulent may file a motion for judicial review of the financing statement. If a court determines that a financing statement is fraudulent, the court may award the prevailing party all costs related to the review, declare the financing statement ineffective; and order the office or agency that possesses the financing statement to terminate or purge the financing statement.<sup>lxxiii</sup>

### **Kansas**

A person named as the debtor on a lien the person believes to be fraudulent may file a motion for expedited judicial review of the status of the lien. A lien is considered fraudulent if the person named as debtor did not consent to the lien. No filing fee is required for the motion. The court may issue a finding based solely on the documentation submitted with the motion, and without notice of any kind. The court must send a copy of its findings to each party within seven days after the findings are issued. The court's findings may include an order setting aside the lien and directing the filing office to nullify the lien. In the case of documents filed under the UCC, the order will act as a termination statement.<sup>lxxiv</sup>

### **Maine**

A person named as the debtor on a UCC financing statement the person believes to be fraudulent may file a motion for expedited judicial review to determine the authorization of the filing. No fee is required to file the motion. The purported secured party must be given 20-day notice of the court's review. The court's finding may be based solely on a review of the documentation submitted by the parties. The court must send a copy of its findings to each party within seven days after the findings are issued. If the court finds the financing statement is in fact unauthorized, it must order the filing officer to remove the filing from the records, effective at the expiration of the time period for appeal of the decision, or upon the decision being affirmed following an appeal. If the secured party appeals the court's decision, it must give notice of the appeal to the filing office.

### **Minnesota**

A person who has reason to believe that a UCC financing statement is fraudulent may file a motion for judicial review of the effectiveness of the financing statement. No fee is required for filing the motion. A UCC financing statement is fraudulent if it is filed without the authorization of the person named as the debtor. A copy of the motion must be mailed to the person indicated as the secured party on the financing statement, along with a form for responding to the motion and the relevant section of law.

The person named as secured party has 20 days to respond to the motion and request a hearing. If a hearing is requested, the court must hold the hearing within five days. If a hearing is not requested by day 20, the court must conduct a review of the motion within five days after the 20 day period expires, and its findings may be based solely on a review of the documentation included with the motion. The court must send each party a copy of its finding within seven days of its decision. The court may find the financing statement was unauthorized and not legally valid, and may also order the filing office to remove the financing statement from the records. The person who brought the motion must file a copy of the court's findings with the filing office. No filing fee is required. The court may award the prevailing party all costs related to the review, including filing fees, attorney fees, and administrative costs.<sup>lxxv</sup>

### **New York**

An employee of the state or political subdivision who is identified as a debtor in a financing statement may bring a proceeding against the named filer of such statement to invalidate the filing where the statement was falsely filed. If the court finds that the financing statement was falsely filed, the court must order expungement or redaction of the state in the office where the financing statement was filed. If the court finds that an individual has engaged in a repeated pattern of false filings, the court may enjoin the individual from filing further financing statements without leave of the court.<sup>lxxvi</sup>

### **Oregon**

If an invalid encumbrance has been filed, an expedited show cause order for judicial relief may be filed and shall result in the invalid encumbrance being stricken from the record.

### **Texas**

A person named as the debtor on a document purporting to claim a lien believes the document is false; the person may file a motion with the court for judicial review. The court's review may be

made ex parte without delay or notice of any kind, and the court's findings may be based solely on a review of the documentation attached to the motion. No filing fee is required. A copy of the finding must be sent to each party within seven days of the court's decision.<sup>lxxvii</sup> If the lien that is the subject of the court's findings is one that is filed with the Secretary of State, any person may file a copy of the court's findings with the Secretary of State. The Secretary of State must file the findings with the records pertaining to the original document.<sup>lxxviii</sup>

## Appendix IV: State Criminal and Civil Penalties

### **Alabama**

A person commits the crime of offering a false instrument for recording if, knowing that a written instrument relating to or affecting real or personal property, or an interest therein, or directly affecting contractual relationships contains a material false statement or material false information, and with intent to defraud, he presents or offers it to a public office or a public employee, with the knowledge that it will be registered, filed or recorded or become a part of the records of that public office or public employee. Offering a false instrument for recording is a Class A misdemeanor. A person commits the crime of offering a false instrument for recording against a public servant if the person offers, for recording, a written instrument which relates to or affects the real or personal property, or an interest therein, or a contractual relationship of a public servant, knowing the written instrument contains a materially false statement or materially false information, with the intent to defraud, intimidate, or harass the public servant, or to impede the public servant in the performance of his or her duties. Offering a false instrument for recording against a public servant is a Class C felony.<sup>lxxix</sup>

### **Arkansas**

It is a crime to file a fraudulent financing statement with the purpose to defraud or harass a person. A first offense is a misdemeanor, and subsequent offense is a felony. Arkansas also provides civil penalties that include damages, courts costs, attorney's fees, and related expenses. A person may also seek injunctive relief.<sup>lxxx</sup>

### **California**

No person may knowingly file a false lien or other encumbrance against a public officer or employee with the intent to harass or hinder the person in discharging his/her official duties. Any person who violates this provision is liable for civil damages.<sup>lxxxi</sup>

### **Florida**

A person who files with the intent to defraud or harass another, any instrument containing a materially false, fictitious, or fraudulent statement or representation that purports to affect an owner's interest in the property described in the instrument commits a felony. The term "instrument" includes a financing statement. If a person is convicted of violating this provision the sentencing court shall issue an order declaring the instrument forming the basis of the conviction null and void and may enjoin the person from filing any instrument in an official record absent prior review and approval for filing by a circuit or county court judge. The sentencing court may also order the instrument forming the basis of the conviction sealed from the official record and removed from any applicable electronic database used for recording instruments in the official record. Any person adversely affected by an instrument filed in the official record which contains a materially false, fictitious, or fraudulent statement or representation has a civil cause of action under this section without regard to whether criminal charges are pursued. Upon a finding that an instrument contains a materially false, fictitious, or fraudulent statement or representation such that the instrument does not establish a legitimate property or lien interest in favor of another person the court shall determine whether the entire instrument or certain parts thereof are null and void. If the court finds the instrument void in its entirety, it may order the instrument sealed from the official

record and removed from any electronic database used for indexing or locating instruments in the official record. Upon a finding of intent to defraud or harass, the court or jury shall award actual damages and punitive damages. The court may also levy a civil penalty.<sup>lxxxii</sup>

### **Georgia**

It is unlawful for a person to knowingly file a false lien or encumbrance in a public record or private record that is generally available to the public against the real or personal property of a public officer or employee on account of the performance of the officer or employee's official duties, knowing or having reason to know that such lien or encumbrance is false or contains a materially false, fictitious, or fraudulent statement or representation. Any person who violates this provision is guilty of a felony and, upon conviction, shall be punished by imprisonment of not less than one nor more than 10 years, a fine not to exceed \$10,000, or both.<sup>lxxxiii</sup>

### **Illinois**

No person shall cause to be communicated to the filing office for filing a false record the person knows or reasonably should know is not authorized, is not related to a valid transaction, lien, or court judgment, and is filed with the intent to harass or defraud the person identified as the debtor in the record or any other person. A violation of this provision is a misdemeanor for a first offense, and a felony for a second or subsequent offense.

A person who violates this provision is also liable in a civil action for damages, attorney's fees, court costs, and other related expenses.

### **Kansas**

A person aggrieved by a fraudulent lien may bring an action for civil penalties and injunction against the person who filed the unauthorized lien. Potential civil penalties include damages, court costs, and attorney's fees. A court may also issue an injunction preventing the defendant from filing any future liens without authorization of the court.<sup>lxxxiv</sup>

### **Maine**

Criminal and civil penalties apply against those who file an unauthorized financing statement with the intent to harass, hinder, or defraud the person named as the debtor. Potential civil penalties include damages, court costs, attorney's fees, and related expenses. A person impacted by the unauthorized financing statement, or the attorney general, may bring an action to recover damages or seek an injunction.<sup>lxxxv</sup>

### **Michigan**

Knowingly or intentionally filing a false or fraudulent financing statement with the office of the Secretary of State is a felony. If the person is convicted of the violation, the court may find that the financing statement is ineffective and may order the office of the Secretary of State to terminate the financing statement and may order restitution.

A debtor named in a false or fraudulent financing statement may file an action against the person that filed the financing statement seeking relief or damages, including, an order declaring the financing statement ineffective and ordering the Office of the Secretary of State to terminate the financing statement, and attorney fees.<sup>lxxxvi</sup>

### **Minnesota**

Civil and criminal penalties apply against a person who knowingly files a financing statement that is not related to a valid lien or security agreement, or is for an improper purpose, including harassing, hindering, or defrauding any person. Filing a fraudulent financing statement is a gross misdemeanor, except where the a person commits the offense with the intent to influence or otherwise tamper with a juror or a judicial proceeding or with intent to retaliate against: a judicial officer; a prosecutor, defense attorney, or officer of the court, because of that person's performance of official duties in connection with a judicial proceeding; a sheriff or deputy sheriff because of that person's performance of official duties in connection with a sheriff's sale of real property; or a county recorder because of that person's performance of official duties in connection with the filing of liens placed on real property; or commits the offense after having been previously convicted of a violation of this provision.<sup>lxxxvii</sup> In these cases the offense is a felony. Potential civil penalties include damages, court costs, attorney's fees, and related expenses. A person impacted by the unauthorized financing statement, the attorney general, or the county or city attorney, may bring an action to recover damages or seek an injunction.<sup>lxxxviii</sup>

### **Missouri**

A person shall not knowingly or intentionally file, attempt to file, or record any financing statement with the secretary of state with the intent that such document or statement be used to harass or defraud any other person or knowingly or intentionally file, attempt to file, or record such a document or statement that is materially false or fraudulent. A person who violates this subsection shall be guilty of a class E felony.<sup>lxxxix</sup>

### **Montana**

A person adversely affected by a fraudulent lien may recover damages from the person responsible for filing the lien.<sup>xc</sup>

### **Nebraska**

Fraudulently filing a financing statement is a Class IV felony.<sup>xcii</sup>

### **Nevada**

Any person who knowingly offers any false or forged instrument for filing is guilty of a category C felony and shall be punished by imprisonment in the state prison for a minimum term of not less than one year and a maximum term of not more than five years and may be further punished by a fine of not more than \$10,000. Additionally, any person who knowingly offers any false or forged instrument for filing in this office may also be subject to civil liability. Any person who presents for filing a lien against the real or personal property of a public officer, candidate for public office, public employee or participant in an official proceeding, or a member of the immediate family of a public officer, candidate for public office, public employee or participant, which is based on the performance of or failure to perform a duty relating to the office, employment or participation by the public officer, candidate for public office, public employee or participant if the person knows or has reason to know that the lien is forged or fraudulently altered, contains a false statement of material fact or is being filed in bad faith or for the purpose of harassing or defrauding any person is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than two years and a maximum term of not more than 20 years and may

be further punished by a fine of not more than \$150,000. The person may also be subject to civil liability.<sup>xcii</sup>

A person shall not willfully file, promote the filing of, or cause to be filed, or attempt or conspire to file, promote the filing of, or cause to be filed, any record in the Office of the Secretary of State if the person has actual knowledge that the record: is forged or fraudulently altered; contains a false statement of material fact; or is being filed in bad faith or for the purpose of harassing or defrauding any person. Any person who violates this section is liable in a civil action brought pursuant to this section for actual damages caused by each separate violation of this section or \$10,000 for each separate violation of this section, whichever is greater; all costs of bringing and maintaining the action, including investigative expenses and fees for expert witnesses; reasonable attorney's fees; and any punitive damages that the facts may warrant.<sup>xciii</sup>

### **New Hampshire**

A person who files a fraudulent financing statement is liable for damages, court costs, and attorney's fees. A financing statement is fraudulent if it is not authorized, contains a materially false statement, or is groundless. An owner of property covered by a fraudulent financing statement may file suit in court to have the fraudulent financing statement released or cancelled.<sup>xciv</sup>

### **New York**

A person is guilty of offering a false instrument for filing where the person knows the written instrument contains a false statement or false information, and with intent to defraud the state or any political subdivision, public authority or public benefit corporation of the state, he or she offers or presents it to a public office, public servant, public authority or public benefit corporation with the knowledge or belief that it will be filed with, registered or recorded in or otherwise become a part of the records of such public office, public servant, public authority or public benefit corporation. Offering a false instrument for filing in the first degree is a felony. A person commits the crime of offering a false instrument for filing in the second degree if the instrument is a UCC financing statement and the collateral asserted to be covered by the statement is the property of a person who is a state or local officer or otherwise a judge or justice of the court system, and the financing statement does not relate to an actual transaction, and the person filed the financing statement in retaliation for the performance of official duties by the person.<sup>xcv</sup>

### **North Dakota**

Criminal and civil penalties apply against a person who knowingly files a financing statement that the person knows is not authorized by the individual named as the debtor, and was filed with the intent to harass, hinder, or defraud any person. A first offense is a misdemeanor, and after two or more violations it becomes a felony. Potential civil penalties include damages, court costs, attorney's fees; and related expenses. A person impacted by the unauthorized financing statement, the attorney general, state's attorney, or municipal attorney may bring an action to recover civil damages or seek an injunction.<sup>xcvi</sup>

### **South Carolina**

It is a felony to knowingly or intentionally file a false or fraudulent financing statement for the purpose of hindering, harassing, or wrongfully interfering with another person. If a person is convicted of violating this provision, the court may find that the financing statement is ineffective,

may order the filing office to terminate or purge the financing statement, and may order restitution to an aggrieved party.

A person named as a debtor in a false or fraudulent financing statement may file an action against the person who filed the document seeking relief or damages, including an order declaring the financing statement ineffective, ordering the filing office to terminate or purge the financing statement, and awarding reasonable attorney fees.<sup>xcvii</sup>

### **Texas**

A person may not intentionally or knowingly file a UCC financing statement that contains a materially false statement or is groundless. A person who files a fraudulent financing statement is liable for damages, court costs, and attorney's fees. An owner of property covered by a fraudulent financing statement may also request release of the fraudulent statement.<sup>xcviii</sup> An offense of this law is a misdemeanor, unless the fraudulent financing statement is filed with the intent to harass or defraud, in which case it is a felony.<sup>xcix</sup>

Civil penalties apply against a person who files a fraudulent lien or claim against real or personal property with the intent to cause another person financial injury, mental anguish, or emotional distress. Potential penalties include damages, court costs, and attorney's fees. Civil penalties also apply against any inmate who files a financing statement, or any person who files a financing statement on an inmate's behalf, unless the financing statement is accompanied by a statement indicating that the document is being filed by an inmate, or by a person on the inmate's behalf. A person impacted by a fraudulent lien, the attorney general, or a district, county, or municipal attorney may bring an action to recover damages or seek an injunction.<sup>c</sup>

### **Tennessee**

It is an offense for any person to knowingly prepare, sign, or file any lien or other document with the intent to encumber any real or personal property when such person has no reasonable basis or any legal cause to place such lien or encumbrance on such real or personal property. The term "person" includes any individual or entity. These provisions do not apply to a license attorney who prepares a document in the course of representation of a client; specified financial institutions; a title insurance company or agent who prepares, signs, or files a lien or other document in the ordinary course of business; or a real estate licensee operating in compliance with applicable law. A violation of this provision is a Class E felony.<sup>ci</sup>

### **Utah**

No person shall cause a record to be communicated to the filing office if the record is not related to an existing or anticipated transaction and the record is filed knowingly or intentionally to harass the person identified as the debtor in the record or defraud the person identified as the debtor in the record. A person who violates these provisions is guilty of a class B misdemeanor, a class A misdemeanor, or a third-degree felony depending on the violation.<sup>cii</sup>

A person is guilty of the crime of wrongful lien if that person knowingly makes, utters, records, or files a lien having no objectively reasonable basis to believe he has a present and lawful property interest in the property or a claim on the assets. A violation is a third-degree felony unless the person has been previously convicted of this offense, in which case the violation is a second-degree felony.<sup>ciii</sup>

### **Virginia**

Any person who maliciously files a lien or encumbrance in a public record against the real or personal property of another knowing that such lien or encumbrance is false is guilty of a felony. The court shall direct the clerk of any jurisdiction in which a false lien or encumbrance has been filed to release from record such lien or encumbrance. Such lien or encumbrance shall be deemed invalid and shall be treated as if it was never filed.<sup>civ</sup>

### **West Virginia**

No person may cause to be communicated to the filing office for filing a false record the person knows or reasonably should know is not authorized or permitted under state law and is filed with the intent to harass or defraud the person identified as debtor in the record or any other person. Any person who violates this provision is, for a first offense, guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100 nor more than \$1000 or, in the discretion of the court, be confined in jail not more than twelve months, or both fined and confined. Any person who violates this provision for a second or subsequent offense, be guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than one nor more than five years. Any person who violates this provision is liable in a civil action to each injured person for up to \$10,000; reasonable attorney fees; court costs and other expenses; and in the discretion of the court, punitive damages in an amount determined by the court or jury.<sup>cv</sup>

Additional Questions? Contact NASS: [nass@ssos.org](mailto:nass@ssos.org) | 202-624-3525

## Endnotes

<sup>i</sup> NASS/IACA Joint Task Force on Bogus UCC Documents, *Report and Recommendations* <[www.iaca.org/downloads/BogusFiling/Recommendations\\_on\\_Bogus\\_Filings.pdf](http://www.iaca.org/downloads/BogusFiling/Recommendations_on_Bogus_Filings.pdf)> (2006).

<sup>ii</sup> Federal Bureau of Investigation, *Sovereign Citizens: A Growing Domestic Threat to Law Enforcement* <[www.fbi.gov/stats-services/publications/law-enforcement-bulletin/september-2011/sovereign-citizens](http://www.fbi.gov/stats-services/publications/law-enforcement-bulletin/september-2011/sovereign-citizens)> (Sept. 2011).

<sup>iii</sup> Southern Poverty Law Center, *Sovereign Citizens Movement* <[www.splcenter.org/get-informed/intelligence-files/ideology/sovereign-citizens-movement](http://www.splcenter.org/get-informed/intelligence-files/ideology/sovereign-citizens-movement)> (accessed on Mar. 12, 2012).

<sup>iv</sup> The American Bar Association Section on Business Law Joint Task Force on Filing Office Operations & Search Logic, *States Ring in the New Year by Amending UCC Article 9* <<http://apps.americanbar.org/buslaw/committees/CL190000pub/newsletter/200901/subcommittees/foosl.pdf>> (accessed May 5, 2012).

<sup>v</sup> *Uniform Commercial Code* § 9-501(1)(n).

<sup>vi</sup> See Federal Bureau of Investigation, *supra* n. 2.

<sup>vii</sup> U.S. Department of Justice, *News Release* [www.justice.gov/usaio/ohn/news%202005-2009/11September2006.html](http://www.justice.gov/usaio/ohn/news%202005-2009/11September2006.html) (Sept. 11, 2006); Southern Poverty Law Center, *The Sovereigns: A Dictionary of the Peculiar* <[www.splcenter.org/get-informed/intelligence-report/browse-all-issues/2010/fall/sovereign-idioticon-a-dictionary-of-the](http://www.splcenter.org/get-informed/intelligence-report/browse-all-issues/2010/fall/sovereign-idioticon-a-dictionary-of-the)> (Fall 2010).

<sup>viii</sup> Article 9 covers transactions involving both tangible property (e.g. goods, inventory, equipment) and intangible property (e.g. promissory notes, letters of credit, deposit accounts) as collateral. Transactions involving real property, including mortgages, are generally not within the scope of Article 9.

<sup>ix</sup> *Uniform Commercial Code* §§ 9-516(a), 9-520(a).

<sup>x</sup> *Id.* § 9-513, cmt. 3.

<sup>xi</sup> *Id.* § 9-518, cmt. 2.

<sup>xii</sup> *Id.* §§ 9-513 cmt. 5; 9-519(g) & cmt. 6.

<sup>xiii</sup> *Id.* § 9-625(a), (b) & cmt. 2

<sup>xiv</sup> *Id.* 9-625(e)(3), (e)(4); also see Scott E. Reynolds, *How To Recognize and Remedy an Unauthorized Financing Statement*, New Jersey Law Journal <[http://riker.com/images/uploads/pdfs/Reynolds\\_December\\_2011\\_NJLJ\\_Article.pdf](http://riker.com/images/uploads/pdfs/Reynolds_December_2011_NJLJ_Article.pdf)> (Dec. 5, 2011); *Williams*, 476 F. Supp. 2d 1368 at 1379 (awarding damages to victims of bogus filing under Florida's UCC remedies provision (Fla. Stat. § 679.625(5)(c) (2012)).

<sup>xv</sup> Uniform Commercial Code, § 9-518 cmt. 3.

<sup>xvi</sup> It should be noted that Congress also took this approach, passing a law in 2008 that makes it a federal offense to file a false retaliatory lien against a federal official.

<sup>xvii</sup> Some of these provisions refer to financing statements, and others refer to liens. Provisions using the latter reference are included to the extent that they are located in a state's UCC Article 9 laws, or otherwise appear to cover financing statements.

<sup>xviii</sup> S.C. Code Ann. § 36-9-516(b)(8), (9)

<sup>xix</sup> See e.g. *U.S. v. Leitner*, No. 3:10cv454/RS-CJK (N.D. Fla.) (2011) (court order removing bogus UCC financing statements from the Florida UCC registry); *U.S. v. Davenport*, No. CV-10-027-JLQ (E.D. Wash.) (2010) (court order expunging bogus UCC financing statements from the Washington State UCC records).

<sup>xx</sup> Ala. Admin. Code r. 820-4-3.02(3)(b), (3)(c), (7)

<sup>xxi</sup> Ariz. Rev. Stat. § 14-121(B).

<sup>xxii</sup> AR Code § 4-9-520

<sup>xxiii</sup> Cal. Govt. Code Ann. § 12181

<sup>xxiv</sup> Idaho Code 28-9-516A

<sup>xxv</sup> 5 Ill. Comp. Stat. 9-516

<sup>xxvi</sup> Ind. Code § 26-1-9.1-901

<sup>xxvii</sup> Ky. Rev. Stat. Ann. § 355.9-516A

<sup>xxviii</sup> Me. Rev. Stat. Ann. 5 § 90-F(1)

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xxix Mich. Comp. Laws § 440.9520

xxx *Id.* § 9501(4), (5)

xxxi Minn. Stat. § 36.9-516

xxxii Mo. Rev. Stat. § 400.9-516(b)

xxxiii Mont. Code. Ann. §30-9A-420(1)

xxxiv Neb. Rev. Stat. § 9-516(8)

xxxv NRS 104.9516

xxxvi NRS 225.084

xxxvii New Jersey Statutes 12A:9-516

xxxviii N.C. Gen. Stat. § 29-516(8)

xxxix Ohio Rev. Code Ann. § 111.24(A), (B)

xl Or. Rev. Stat. Ann. § 79.0516(2)(h)

xli *Id.* § 0520(5).

xlii 15 Pa.C.S. § 136

xliii S.C. Code Ann. § 36-9-516(b)(8), (9)

xliv Tex. Govt. Code. Ann. § 405.022

xlv Utah Code 70A-9a-516

xlii Va. Code Ann. §§ 8.9A-516; 8.9A-520

xlvii W. Va. Code § 46-9-516(b)

xlviii Alabama Code § 13A-9-12

xlix AR Code § 4-9-529

<sup>1</sup> § 810 ILCS 5/9-501.1

li Iowa Code § 554-9513A

lii Me. Rev. Stat. Ann. 5 § 90-F(1)

liii Mich. Comp. Laws § 440.9501a

liv *Id.* § 9520.

lv Minn. Stat. § 336.9-513.

lvi Miss. Code. Ann. § 75-9-501.1

lvii Mo. Rev. Stat. § 400.9-516(e)

lviii Mont. Code. Ann. §30-9A-420(1)

lix Neb. Rev. Stat. § 9-513A

lx N.Y. CPL § 440.70

lxii N.C. Gen. Stat. § 29-518

lxiii 13 Pa. Consol. Stat. Ann. § 9518

lxiv S.C. Code Ann. § 36-9-518(d)

lxv Tenn. Code. Ann. § 47-9-513

lxvi Tenn. Code. Ann. § 39-17-117

lxvii Tex. Bus. Com. Code Ann. § 9-5185

lxviii 70A-9a-513.5

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lxxviii Va. Code Ann. § 8.9A-516

lxxix W. Va. Code § 46-9-516(a)

lxx Colo. Rev. Stat. § 38-35-204

lxxi Cal. Code. Civ. Proc. §§ 765.010, 030

lxxii CT Gen Stat § 42a-9-518

lxxiii Ind. Code § 26-1-9.1-902

lxxiv Kan. Stat. Ann. § 58-4301

lxxv Minn. Stat. § 545.05

lxxvi N.Y. JUD § 212

lxxvii Tex. Govt. Code Ann. § 51.903

lxxviii Id. § 905

lxxix Alabama Code § 13A-9-12

lxxx Ark. Code Ann. § 5-37-215

lxxx Cal. Govt. Code Ann. § 6223

lxxxii Fla. Stat. § 817.535

lxxxiii 2012 Ga. Laws. Act 582

lxxxiv Kan. Stat. Ann. § 58-4302

lxxxv Title 5, Me. Rev. Stat. Ann. § 90-E

lxxxvi Mich. Comp. Laws § 440.9501(6), (7)

lxxxvii Minn. Stat. § 609.7475

lxxxviii Minn. Stat. § 604.17

lxxxix Mo. Rev. Stat. § 400.9-501(c)

xc Mont. Code. Ann. §30-9A-420(2)

xcii Neb. Rev. Stat. § 28-935

xcii NRS 225.083

xciii NRS 225.084

xciv N.H. Rev. Stat. Ann. § 382-A:9-529

xcv N.Y. CPL § 440.70

xcvi N.D. Cent. Code § 41-10.

xcvii S.C. Code Ann. § 36-9-501(c)(d)

xcviii Tex. Bus. Com. Code Ann. § 9-5185

xcix Tex. Penal Code Ann. § 37.101

c Tex. Civ. Prac. And Remedies Code § 12.002, .003

cii Tenn. Code. Ann. § 39-17-117

cii Utah Code § 76-6-503.7

ciii Utah Code Ann. § 76-6-503.5

civ Va. Code Ann. § 18.2-213.2

cv W. Va. Code § 46-9-516(a)