

All Other Universal Commercial Code Filings

AMENDMENTS - (KRS 355.9 - 402)(4)

A financing statement may be amended. Additional collateral may be added by amendment. An amendment does not extend the five year filing period. An amendment must be signed by both the debtor and the secured party to be filed. The identification number of the debtor(s) must be on the amendment. (HB 739).

ASSIGNMENTS - (KRS 355.9 - 403)

1. A financing statement may disclose an assignment of a security interest in the collateral described in the financing statement by indication within the financing statement of the name and address of the assigned or by an assignment on the face or back of the financing statement or copy thereof at the time of filing the original financing statement. On a built-in assignment, the document has the same signature requirements as an original UCC filing. Although it is preferable to have the built-in assignment signed by the debtor and the secured party, the statute requires only the signature of the debtor.

2. A secured party may assign all or part of his rights under a financing statement by filing a separate written statement of assignment. The document must be signed by the secured party of record and requires the name of the secured party of record, the debtor, the file number, the date of filing of the original financing statement plus the name and address of the assignee and a description of the collateral assigned. The identification number of the debtor(s) must be on the assignment. (HB 739)

Assignments - Duties of filing officer - KRS 355.9 - 403(2)

1. Collect the proper fee.
2. The filing officer shall mark the document with the date and hour of filing.
3. The filing officer shall note the assignment in the appropriate index
4. The filing officer shall annex the separate assignment to the original financing statement
5. After filing and indexing the assignment, the assignee becomes the secured party of record
6. There is a fee for filing and indexing an assignment. If the assignment is filed subsequent to the original, a fee is charged to cover the minimum cost of mailing another filing receipt to the assignee as the succeeding secured party of record
7. An original security agreement showing an assignment within or attached thereto would create a fee.
8. A fee is charged for a separate assignment filed subsequent to the original financing statement plus a postage fee.

CONTINUATIONS - (KRS 355.9 - 403)

A continuation statement may be filed by the secured party within six (6) months prior to the expiration of the filing. The continuation statement must be signed by the secured party of record,

identify the original filing by file number and date filed and state that the original statement is still effective. The identification number of the debtor(s) must be on the continuation statement. (HB 739) Upon the timely filing of a continuation statement, the filing is extended for an additional five year period after the last date the original filing and any previous continuation statements' five year periods would have expired. Succeeding continuation statements may be filed at the appropriate time.

The County Clerk shall physically annex the original financing statement and each succeeding continuation statement and any other related filing (amendment, assignment).

FILE SEARCHES - (KRS 355.9 - 407)

Any person may request a file search. The County Clerk shall issue his certificate showing whether there is on file on the date and hour stated within, any presently effective financing statement naming a particular debtor and any assignment thereof and if there is, furnish the date and hour of filing and the names and addresses of the secured parties therein. There is a fee per name searched (KRS 64.012)

Neither the County Clerk nor any Deputy or employee shall be personally liable for any damages which may arise due to information furnished pursuant to this section which is subsequently shown to be inaccurate.

FIXTURE FILINGS - (KRS 355.9 - 402)(5) Timber to be cut, minerals (oil and gas)

All these are regular UCC filings, but have some additional requirements:

1. Must show that it covers this type of collateral
2. Must recite that it is to be filed in the same office as real estate records
3. The description of the real estate must be shown and the name of the record owner of the real estate must be listed. The description can be more informal than is required for deeds and mortgages.
4. The County Clerk shall index the names of the debtors and any owners of record of the real estate listed on the UCC as mortgagors and the secured party as a mortgagee (KRS 355.9 - 403)(7).
5. These filings may be amended or assigned like all other UCC filings. They expire after five years after the date of filing.
6. These filings require full termination's or partial termination's, as the case may be
7. All fees are exactly the same as all other UCC filings

A mortgage can include items which are or can become fixtures. A fixture filing included in a mortgage document remains effective as mortgage for the length of the mortgage. Whenever a fixture filing is included in a mortgage, the entire document is filed as and indexed as a mortgage and must pay the filing fee for a mortgage. If filed as a mortgage the document must also meet all recording requirements of a mortgage.

PHONY OR ILLEGAL LIENS

House Bill 455 addresses phony liens. This section does not give the County Clerk's office any right to refuse the lien as long as the lien has the correct filing information.

SECTION 54. A NEW SECTION OF KRS CHAPTER 434 IS CREATED TO READ AS FOLLOWS:

<<+(1) A person is guilty of filing an illegal lien when he files a document or lien that he knows or should have known was forged, groundless, contained a material misstatement, or was a false claim. It shall be an affirmation defense that any material misstatement was not intentional.+>>

<<+(2) Filing an illegal lien is a Class D felony for the first offense, a Class C felony for any second offense, and a Class B felony for any subsequent offense.+>>

RELEASE OF COLLATERAL - (KRS 355.9 - 406)

A secured party of record may by his signed statement release all or part of any collateral described in a filed financing statement. A release or termination shall contain the following:

1. Fee (if required)
2. Description of collateral being released
3. Name and address of the debtor
4. Name and address of the secured party of record
5. Identification number of the debtor(s) (HB 739)
6. File number

A release signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment together with the proper fees to be filed and processed.

The fee for releasing a lien in full is included in the fee for filing the original financing statement.

There is a fee for a partial release of the original filed financing statement for each such partial release (KRS 64.012).

Upon presentation of a statement of release, the filing officer shall mark the statement with the hour and date of filing and shall note the filing in the appropriate index.

TERMINATION STATEMENT - (KRS 355.9 - 404)

3. Whenever a secured party no longer has an outstanding secured obligation and upon the written demand of the debtor or within fifteen days after a secured transaction has terminated, the secured party must file with each filing officer with whom the financing statement was filed a termination statement. The termination statement, signed by the secured party, must show the original file number and the date filed of the original financing statement. The termination statement requires the identification number of the debtor(s). (HB 739)

The filing officer shall note the termination in the index.

If a filing officer has a microfilm or other photographic record of the financing statement and any annexes, he may remove it from his files upon receipt and filing of the termination statement. In

any case, the filing officer may remove the original financing statement and any annexes thereto after one year the filing of the termination statement.

The uniform fee for a termination shall be included in the fee collected whenever the original financing statement was filed.

TITLE LIEN STATEMENT

Requirements for Filing a Financing Statement - (KRS 355.9 - 402)

1. Filing fees (KRS 64.012, KRS 142.010, KRS 382.240)
2. Name(s) of the debtor and secured party
3. Signature of the debtor
4. Address of the secured party
5. Mailing address of the secured party
6. A statement indicating types, or describing the items of collateral
7. If the financing statement covers crops growing or to be grown, a description of the real estate concerned and must describe the production season
8. Identification number (defined below HB 739)

"Identification number" means a distinct alpha, numeric, or alphanumeric designation assigned to a person. The identification number for a person who is other than an individual shall be the Internal Revenue Service taxpayer identification number of the person. If the person is an individual, the identification number shall be the person's Social Security number or if the customer refuses to give the social security number, they may use the first three characters of their last name and the date of birth in the format mm/dd/yy. If the individual only has two characters in his last name, the letter Z must be used as the last character (per administrative regulation from the Secretary of State Office).

A copy of the security agreement is sufficient as a financing statement if it contains the above information and is signed by the debtor.

A carbon, photographic or other reproduction of a security agreement or a financing statement is sufficient as a financing statement if the security agreement so provides or if the original has been filed in this state or in any other state.

A financing statement which otherwise complies with the foregoing information is sufficient when it is signed by the secured party instead of the debtor if it is filed to perfect a security interest in: KRS 355.9-402(2)

- a. Collateral already subject to a security interest in another state when it is brought into the state or when the debtor's location is changed to this state. Such a financing statement must state that the collateral was brought into this state or that the debtor's location was changed to this state.
- b. Proceeds under KRS 355.9 - 306 if the security interest in the original collateral was perfected
- c. A lapsed filing
- d. Collateral acquired after a change of name, identity or corporate structure of the debtor

The fee collected at filing includes the fee for termination and for sending or delivering the terminated instrument and financing statement (KRS 355.9 - 402)(5).

Place of Filing - (KRS 355.9 - 401)

Generally, it is not the duty of any county clerk to determine the proper place of filing any security agreement.

Duration of Filing (KRS 355.9 - 403)

A filed financing statement is effective for a period of five years from the date of filing. The filing lapses on the expiration of the five year period unless a continuation statement is timely filed prior to lapse.

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