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Relying Solely On Certified UCC Searches Can Cost More than One Additional Search

What Secrets Has Your Search Report Been Keeping From You?

“The most worrisome part of the official UCC search problem involves Federal Tax Liens.”

Delaware - love it or hate it, few states hold such influence on the world of UCC. Why wouldn't they? Delaware is the number one state in which to incorporate and therefore receives a large percentage of UCC filings. But where the Delaware filing office has for years catered to the needs of the corporate filer, they have not been as kind to UCC searchers and filers.

In all states the official search is conducted using narrow search logic so that only filings where the name is close to the name searched are located. While this type of search works when you are trying to test for seriously misleading file names, this approach does not locate similar named debtors.

Why should a searcher be concerned with similar names? For several reasons. A filing is considered effective even if a filing office fails to properly index a filing. In addition, arguments exist as to what the code defines as “public record.” Some would argue that an index available online is a public record, the same as an organic document. Since nothing in the corporate code dictates how a name must be indexed

in corporate records, state filing offices routinely enter changes to fit names into the systems that are used. Although such changes have no effect in the corporate records, they do raise the issue as to what the legal name of an entity is for UCC filings. The issue that all secured lenders should be concerned with is are both name variations captured on the official search?

Abbreviations, spacing, periods and other punctuation often have an effect on what is located when an official search is performed, so it is unlikely that one search would locate debtor name variations. This problem is compounded as Delaware has no viable alternative to the official search that is purchased from the state. Unofficial data that has previously been available is missing in as many as 60,000 filings and is in a recompiled database that is at best inaccurate. To further add to the problems, the state official search does not provide a similar name report, so searchers cannot even make a guess as to what was not included in the official search.

The most worrisome part of the official UCC search problem involves Federal Tax Liens. In Delaware, Federal Tax Liens are included in the same index as UCCs and as the Spearing Tool decision underscored, an IRS lien will take priority over a UCC even if the IRS filed under a name variation.



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Since the IRS files with the name provided by the debtor, and often a debtor does not use the true legal name, how can a secured lender locate filings with similar names?

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Ask your service provider if their Delaware Online UCC Search can:

1. Provide a broad search that is not bound by the strict search logic used for certified searches.
2. Does their search logic ignore spaces, hyphens, periods and other punctuation?
3. If they use Online Data does it include Federal Tax Liens along with the UCC filings.
4. Do they locate and advise you of similar names contained in the official state records?
5. Where is the data used to conduct your search coming from? Delaware does not sell their UCC filing index.
6. Is third party data being used?
7. Do they advise that this information be used for lending decisions?
8. What steps do they take to ensure that the online search report they have provided you is complete?
9. Does their online search contain Federal Tax Lien information?
10. How current is the index date? The more current the data the less likely a “gap” filing will occur.

Is the number of filings located on your search report outnumbered by what’s not included? If your services provider cannot answer the above questions, there could be more than you think!

Talk to your service provider to determine what they are doing to mitigate your risk when conducting searches in Delaware.



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