

30 KAR 5:030. Acceptance and refusal of records.

RELATES TO: KRS Chapter 355.9-515, 355.9-516, 355.9-520

STATUTORY AUTHORITY: KRS 355.9-526(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 355.9-526(1) requires the Secretary of State to promulgate administrative regulations implementing of KRS Chapter 355.9. This administrative regulation establishes the requirements relating to the acceptance and refusal of records.

Section 1. Role of Filing Officer. The duties and responsibilities of the filing officer with respect to the administration of the UCC shall be ministerial. In accepting for filing or refusing to file a UCC record pursuant to the UCC, KRS Chapter 355, and 30 KAR Chapter 5, the filing officer shall not:

- (1) Determine the legal sufficiency or insufficiency of the UCC record;
- (2) Determine that information in the record is correct or incorrect, in whole or in part; or
- (3) Create a presumption that information in the record is correct or incorrect, in whole or in part.

Section 2. Time for filing a continuation statement.(1) First day permitted.

(a) A continuation statement may first be filed:

1. Six (6) months preceding the month in which the financing statement would lapse; and
- 2.a. On the date that corresponds with the date the financing statement would lapse; or
- b. If there is no corresponding date, on the last day of the sixth month preceding the month in which the financing statement would lapse.

(b) The foregoing rule shall be subject to the ability of the filing office to take delivery of the continuation statement as tendered and pursuant to 30 KAR 5:020.

(2) Last day permitted. The last day on which a continuation statement may be filed shall be the date upon which the related financing statement lapses. The foregoing rule shall be subject to the ability of the filing office to take delivery of the continuation statement as tendered and pursuant to 30 KAR 5:020. Accordingly, the time of filing of the continuation statement under 30 KAR 5:020 shall be on or prior to the date upon which the related financing statement lapses and delivery by certain means of communication shall not be available on the last day if the filing office is not open for business on that day.

Section 3. Grounds for Refusal. In addition to refusing a record for any reason, or multiple reasons, as set forth in KRS 355.9-516 and 355.9-516A, a filing office shall refuse to accept a UCC record that fails to provide an address that meets the minimum requirements set forth in 30 KAR 5:010.

Section 4. Procedure Upon Refusal. (1) Except as provided in 30 KAR 5:020, Section 5(2)(b), if the filing officer finds grounds to refuse a UCC record, the filing officer shall refund the filing fee and return the record or a copy of the record in accordance with KRS 355.9-520(2).

(2) Communication of the refusal. The reason for the refusal and other related information shall be made to the remitter as soon as practicable and regardless, it shall be made within three (3) business days after the refused UCC record was received by the filing office. This information shall be communicated by the same means by which the UCC record was delivered to the filing office, by mail, or by a more expeditious means.

(3) Records of refusal, including a copy of the refused UCC record and the ground for re-

fusal, shall be maintained until the first anniversary of the lapse date that applies or would have applied to the related financing statement, assuming that the refused record had been accepted and filed.

Section 5. Notification of Defects. (1) A filing officer may communicate to a filer or remitter that the filing officer noticed apparent potential defects in a UCC record, whether or not it was filed or refused for filing.

(2) The filer or remitter shall be responsible for the legal effectiveness of a filing. The filing office shall not bear responsibility for the effectiveness of records.

Section 6. Refusal Errors. If a secured party or a remitter demonstrates to the satisfaction of the filing officer that a UCC record that was refused for filing should not have been refused under Section 3 of this administrative regulation, the filing officer shall file the UCC record with the filing date and time the UCC record was originally tendered for filing. A filing officer statement record relating to the relevant initial financing statement shall be placed in the UCC information management system on the date that the corrective action was taken. The filing office statement shall provide the date of the correction and explain the nature of the corrective action taken. The record shall be preserved for so long as the record of the initial financing statement is preserved in the UCC information management system. (28 Ky.R. 997; Am. 1345; eff. 12-19-2001; 40 Ky.R. 346; 777; eff. 11-1-2013.)