

30 KAR 5:020. General provisions.

RELATES TO: KRS Chapter 355.9

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 KRS Chapter 355.9. This administrative regulation establishes the general provisions governing 30 KAR Chapter 5 relating to deliveries, approved forms, payments, and public services.

Section 1. UCC Record Delivery.

(1) UCC records may be tendered for filing at the filing office as follows:

(a) Personal delivery by remitter, at the filing office's street address. The file time for a UCC record delivered by this method shall:

1. Be when delivery of the UCC record is taken by the filing office, even though the UCC record has not been accepted for filing and subsequently may be rejected; and
2. Apply only to a remitter who tenders a UCC record to the filing office and awaits an immediate determination of whether or not the UCC record will be taken;

(b) Courier delivery by a person other than a remitter, at the filing office's street address. The file time for a UCC record delivered by this method shall be:

1. Regardless of the time of delivery, at the earlier of the time:
 - a. The UCC record is first examined by a filing officer for processing, even though the UCC record has not been accepted for filing and may be subsequently rejected; or
 - b. The next close of business following the time of delivery; or
2. For a UCC record delivered after regular business hours or on a day the filing office is not open for business, if not examined for processing sooner, the close of business on the next day the filing office is open for business;

(c) Postal service delivery, to the filing office's mailing address. The file time for a UCC record delivered by this method shall be:

1. The next close of business following the time of delivery, even though the UCC record has not been accepted for filing and may be subsequently rejected; or
2. For a UCC record delivered after regular business hours or on a day the filing office is not open for business, the close of business on the next business day.

(d) Electronic filing. UCC records, excluding information statements and filing officer statements, may be transmitted electronically using the XML format approved by the International Association of Corporation Administrators, and the following requirements shall apply:

1. At the request of an authorized XML remitter, the filing officer shall identify which versions and releases of the XML format are acceptable to the filing office; and
2. The file time for a UCC record delivered by this method shall be the time that the filing office's UCC information management system analyzes the relevant transmission and determines that all the required elements of the transmission have been received in a required format and are machine-readable; or

(e) Through direct on-line and Web page data entry. The following requirements shall apply:

1. UCC records may be delivered by on-line data entry using the filing office's Web site on the internet; and
2. The file time for a UCC record delivered by this method shall be the time the entry of all required elements of the UCC record in the proper format is acknowledged by the on-line entry system.

- (2) Means of communication. Regardless of the method of delivery, a financing statement or amendment form shall designate separate fields for:
- (a) Organization and individual names; and
 - (b) The surname, first personal name, additional names, initials, and suffixes for individual names.
- (3) Transmitting utility, manufactured-home, and public-finance transactions.
- (a) The appropriate box on a financing statement shall be marked to indicate that:
 - 1. An initial financing statement is being filed in connection with a manufactured-home or public-finance transaction; or
 - 2. A financing statement is being or has been filed against a debtor that is a transmitting utility.
 - (b) The requisite information shall be transmitted in the proper field in an electronic filing that is an initial financing statement or part of a financing statement to indicate that:
 - 1. An initial financing statement is being filed in connection with a manufactured-home or public-finance transaction; or
 - 2. A financing statement is being or has been filed against a debtor that is a transmitting utility.
 - (c) If the requirements of paragraph (a) or (b) of this subsection are not met, the filing shall not affect the filing office's determination of the lapse date under 30 KAR 5:040, Section 7 or 8.

Section 2. Search Request Delivery. UCC search requests may be delivered to the filing office by any of the means by which UCC records may be delivered to the filing office, in accordance with Section 1 of this administrative regulation.

Section 3. Forms.

- (1) The forms prescribed by KRS 355.9-521 shall be accepted by the filing office.
- (2) A paper-based form approved by the International Association of Corporation Administrators shall be accepted.

Section 4. Fees. The fee for filing a UCC record shall be the amount prescribed by KRS 355.9-525.

Section 5. Methods of Payment. Filing fees and fees for public records services may be paid by the following methods:

- (1) Cash. Payment in cash shall be accepted if paid in person at the filing office;
- (2) Checks. Personal checks, cashier's checks, and money orders made payable to the Kentucky State Treasurer may be accepted for payment, unless the check is not honored.
- (3) Electronic funds transfer. The filing office may accept payment via electronic funds transfer under National Automated Clearing House Association ("NACHA") rules from remitters who have entered into appropriate NACHA-approved arrangements for the transfers and who authorize the relevant transfer pursuant to the arrangements and rules;
- (4) Prepaid account. A remitter may open an account for prepayment of fees by submitting a completed Application for Prepaid Account and prepaying an amount not less than \$250. The filing officer shall issue an account number to be used by a remitter who chooses to pay filing fees by this method. The filing officer shall deduct filing fees from the remitter's prepaid account if authorized to do so by the remitter;
- (5) Debit and credit cards. The filing office shall accept payment by debit cards and credit cards issued by approved issuers. Remitters shall provide the filing officer with the card number, the expiration date of the card, the name of the card issuer, the name of the person or entity to whom the card was issued, and the billing address for the card. Payment shall not be deemed tendered until the issuer or its agent has confirmed payment; or

(6) Interaccount. The filing office shall accept payment by inter-account from state agencies. The agency shall provide the interaccount number at the time of filing.

Section 6. Overpayment and Underpayment Policies.

(1) Overpayment. The filing officer shall refund the amount of an overpayment.

(2) Underpayment. Upon receipt of a UCC record with an insufficient fee, the filing officer shall do one (1) of the following:

(a) A notice of deficiency shall be sent to the remitter and the UCC record shall be held for a period of ten (10) days from the date of the notice for receipt of the fee. Upon receipt of the fee, the UCC record shall be filed as of the time and date of receipt of the full filing fee. If the fee is not received within ten (10) days of the date of the notice, the record shall be returned to the remitter with a written explanation for the refusal to accept the record; or

(b) The UCC record shall be returned to the remitter as provided in 30 KAR 5:030, Section 4. A refund shall be included with the UCC record or delivered under separate cover.

Section 7. Public Records Services. Public records services shall be provided on a nondiscriminatory basis to any member of the public in accordance with this section. The following methods shall be available for obtaining copies of UCC records and copies of data from the UCC information management system:

(1) Individually-identified documents. Copies of individually-identified documents shall be available in the following forms:

(a) Paper; or

(b) JPG files via the web.

(2) Text data from the UCC information management system. A list of available text data elements from the UCC information management system, and the file layout of the text data elements, shall be available from the filing office upon request. Text data from the UCC information management system shall be available as follows:

(a) Full extract. A bulk text data extract of information from the UCC information management system shall be available on a weekly basis.

(b) Update extracts. Updates of text data from the UCC information management system shall be available on a weekly basis.

(c) Format. Text data extracts from the UCC information management system shall be available in the following formats:

1. CD-ROM; or

2. FTP file transfer.

Section 8. Incorporation by Reference.

(1) "Application for Prepaid Account," Secretary of State, Uniform Commercial Code Branch, 10-5-11, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Secretary of State, UCC Branch, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(28 Ky.R. 996; Am. 1344; eff. 12-19-2001; 40 Ky.R. 343; 775; eff. 11-1-2013.)