

**Effective 5/12/2015**

**70A-9a-513.5 Termination of wrongfully filed financing statement -- Reinstatement.**

- (1) As used in this section:
  - (a) "Established filer" means a person that:
    - (i) regularly causes records to be communicated to the filing office for filing and has provided the filing office with current contact information and information sufficient to establish its identity; or
    - (ii) satisfies either of the following conditions:
      - (A) the filing office has issued the person credentials for access to online filing services; or
      - (B) the person has established an account for payment of filing fees, regardless of whether the account is used in a particular transaction.
  - (b) "Filing office" means the same as that term is defined in Section 70A-9a-102, except that it does not include a county recorder office.
- (2) A person identified as debtor in a filed financing statement may deliver to the filing office the debtor's notarized affidavit, signed under penalty of perjury, that identifies the financing statement by file number, indicates the affiant's mailing address, and states that the affiant believes that the filed record identifying the affiant as debtor was not authorized and was caused to be communicated to the filing office with the intent to harass or defraud the affiant. The filing office shall adopt a form of affidavit for use under this section. The filing office may reject an affidavit described in this Subsection (2) if:
  - (a) the affidavit is incomplete; or
  - (b) the filing office reasonably believes that the affidavit was communicated to the filing office with the intent to harass or defraud, or for any other unlawful purpose.
- (3) Subject to Subsection (10), if an affidavit is delivered to the filing office under Subsection (2), the filing office shall promptly file a termination statement with respect to the financing statement identified in the affidavit. The termination statement must identify by its file number the initial financing statement to which it relates and must indicate that it was filed pursuant to this section. A termination statement filed under this Subsection (3) is not effective until 14 days after it is filed.
- (4) The filing office may not charge a fee for the filing of an affidavit under Subsection (2) or a termination statement under Subsection (3). The filing office may not return any fee paid for filing the financing statement identified in the affidavit, whether or not the financing statement is reinstated under Subsection (7).
- (5) On the same day that a filing office files a termination statement under Subsection (3), it shall 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 14 days after filing. The notice shall be sent by mail to the address provided for the secured party of record in the financing statement or by electronic mail to the electronic mail address provided by the secured party of record, if any.
- (6)
  - (a) A secured party that believes in good faith that the filed record identified in an affidavit delivered to the filing office under Subsection (2) was authorized and was not caused to be communicated to the filing office with the intent to harass or defraud the affiant may:
    - (i) before the termination statement takes effect under Subsection (3), request the filing office to review the filed record concerning whether the filed record was filed with the intent to harass or defraud; or

- (ii) regardless of whether the affiant seeks a review under Subsection (6)(a)(i), file an action against the filing office seeking reinstatement of the financing statement to which the filed record relates.
- (b) Within 10 days after being served with process in an action under this Subsection (6), the filing office shall file a notice indicating that the action has been commenced. The notice shall indicate the file number of the initial financing statement to which it relates.
- (c) If the affiant is not named as a defendant in the action described in Subsection (6)(a)(ii), the secured party shall send a copy of the complaint to the affiant at the address indicated in the affidavit. The exclusive venue for the action shall be in the Third District Court. A party may petition the court to consider the matter on an expedited basis.
- (d) An action under this Subsection (6) must be filed before the expiration of six months after the date on which the termination statement filed under Subsection (3) becomes effective.
- (7) If, in an action under Subsection (6), the court determines that the financing statement should be reinstated, the filing office shall promptly file a record that identifies by its file number the initial financing statement to which the record relates and indicates that the financing statement has been reinstated.
- (8) Upon the filing of a record reinstating a financing statement under Subsection (7), the effectiveness of the financing statement is reinstated and the financing statement shall be considered never to have been terminated under this section. A continuation statement filed as provided in Subsection 70A-9a-515(4) after the effective date of a termination statement filed under Subsection (3) or (10) becomes effective if the financing statement is reinstated.
- (9) If, in an action under Subsection (6), the court determines that the filed record identified in an affidavit delivered to the filing office under Subsection (2) was unauthorized and was caused to be communicated to the filing office with the intent to harass or defraud the affiant, the filing office and the affiant may recover from the secured party that filed the action the costs and expenses, including reasonable attorney fees, that the filing office and the affiant incurred in the action. This recovery is in addition to any recovery to which the affiant is entitled under Section 70A-9a-625.
- (10) If an affidavit delivered to a filing office under Subsection (2) relates to a filed record communicated to the filing office by an established filer, the filing office shall promptly send to the secured party of record a notice stating that the affidavit has been delivered to the filing office and that the filing office is conducting an administrative review to determine whether the record was unauthorized and was caused to be communicated with the intent to harass or defraud the affiant. The notice shall be sent by mail to the address provided for the secured party in the financing statement or sent by electronic mail to the electronic mail address provided by the secured party of record, if any, and a copy shall be sent in the same manner to the affiant. The administrative review shall be conducted on an expedited basis and the filing office may require the affiant and the secured party of record to provide any additional information that the filing office considers appropriate. If the filing office concludes that the record was not authorized and was caused to be communicated with the intent to harass or defraud the affiant, the filing office shall promptly file a termination statement under Subsection (3) that will be effective immediately and send to the secured party of record the notice required by Subsection (5). The secured party may thereafter file an action for reinstatement under Subsection (6), and Subsections (7) through (9) are applicable.

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