

Insights

Avoid This Shortcut Despite the Temptation

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Uniform Commercial Code ("UCC") Section 9-504 reads as follows:

§ 9-504. Indication of Collateral. A financing statement sufficiently indicates the collateral that it covers if the financing statement provides:

1. a description of the collateral pursuant to [UCC] Section 9-108; or
2. an indication that the financing statement covers all assets or all personal property.

The Official Comment to UCC Section 9-504 further provides guidance regarding the requirements for the description of collateral as follows:

2. Indication of Collateral. To comply with [UCC] Section 9-502(a), a financing statement must "indicate" the collateral it covers. A financing statement sufficiently indicates collateral claimed to be covered by the financing statement if it satisfies the purpose of conditioning perfection on the filing of a financing statement, i.e., if it provides notice that a person may have a security interest in the collateral claimed. In particular, an indication of collateral that would have satisfied the requirements of former [UCC] Section 9-402(1) (i.e., "a statement indicating the types, or describing the terms, of collateral") suffices under [UCC] Section 9-502(a).

This commentary is important to appreciate the impact of a Seventh Circuit Court of Appeals case entitled *In re: 180 Equipment, LLC*, 938 F.3d 866, 67 Bankr. Ct. Dec. (CRR) 177, 100 U.C.C. Rep. Serv. 2d 37 (7th Cir. 2019). In that case, the secured party, to its detriment, attempted to take a "shortcut" in describing the collateral which had been pledged by the debtor. The financing statement described the collateral as "[a]ll collateral described in First Amended and Restated Security Agreement dated March 9, 2015 between Debtor and Secured Party." The Seventh Circuit Court of Appeals held that that collateral description was insufficient because further inquiry beyond the financing statement is necessary.

The Permanent Editorial Board for Uniform Commercial Code (PEB) provides further guidance and clarification in PEB Commentary No. 26 to Official Comment 2 to UCC Section 9-504 by adding the following:

A financing statement (including any attachments) that does not itself supply information satisfying Section 9-502(a)(3) or Section 9-504, but, rather, refers solely to a record not attached to the financing statement for information seeking to satisfy those provisions, does not satisfy the sufficiency requirement of Section 9-502(a)(3) that the financing statement indicate the collateral that it covers.

In conclusion, it is critically important that a financing statement provides a sufficient description of the collateral, either within the financing statement or attachments to the financing statement, in order to satisfy the requirements of UCC Section 9-504 and create a perfected security interest in the collateral described by the filing of a complete and compliant financing statement.

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