

UCC Filings - Are You Doing Enough to Protect Yourself?

Over the past year, I've had several conversations with dealers regarding incidents where the dealer felt they were protected in connection with a UCC filing, only to discover they were not. While I don't profess to be an expert, I have done some research and feel most dealers could use some brushing up on UCC Law 101. I cannot provide all of the answers, but hopefully this article will address some common issues and offer insight into what you must do in order to provide maximum protection to you and your business. Remember, an ounce of prevention (minimal cost up front) is worth a pound of cure (thousands of dollars spent once the mistake is made).

I Made the Sale Without a Trade. It Doesn't Get Any Better Than This!

You sold a piece of equipment and no trade was involved. The customer asked to finance the machine through the lender of his choice, and you prepared the documents for him to sign. At this time, a UCC was signed and filed with the Secretary of State, so everything was handled. Not so fast, my friend. A UCC filing is only good for five years, at which time it automatically expires. If your customer signs a contract for longer than five years, you need to verify who will be responsible for renewing the UCC filing once it expires. Hopefully, the finance company will be responsible, but don't leave it to chance. Find out for sure. If it becomes your responsibility, put a record keeping strategy in place so you know when UCC filings need to be renewed.

I Made the Sale and Traded for a Machine at my Price. It Couldn't Get Any Easier Than This!

Obviously, when you close a sale a certain amount of euphoria exists. You've been negotiating with the customer, sometimes over the span of several months, and you finally reach an agreement. As a salesperson, you have reached the point where you don't want to do or say anything to mess up the delicate balancing act that brought the two sides together in agreement.

Most of us do all the right things to make sure a retail finance agreement is put together the way the customer expects and we file a UCC so the dealership is protected on the sold piece of machinery. The euphoria continues to grow and all the bases are covered, right? Once again, not so fast my friend.

What about the piece of machinery that the customer traded to you? Sure, he told you that he still owed a finance company a specified amount on that piece of machinery, and you included a pay-off for it in the new finance agreement. And when the customer signed the new finance agreement, you explained to him that he was assuring you that there were no outstanding liens filed against the machine he was trading, and he informed you that was the case. But was that really the truth?

In several cases I've discussed with dealers, they discovered at a later date that the traded machine was listed as collateral in another financing statement, usually with a bank. The bank had filed a blanket lien on the customer, which listed all equipment owned by the customer. Quite often, the customer doesn't even realize that a blanket lien is a second lien on any machinery that he owns and fails to notify you that this lien exists. Once the banker finds out that the customer has traded machines, he could put his stamp of approval on the deal, and no problems will follow.

However, if the banker did not want the customer to trade machines, problems could occur. The banker could return to you, the trading dealer, and demand payment for the collateral that was traded to you. All of a sudden you have a huge expense to cover that wasn't included in the original deal. Quite often this reaches into the tens of thousands of dollars.

How do I Protect the Dealership and Myself?

The answer is really quite simple. It is your responsibility to make sure that no liens exist on a piece of machinery traded to you from a customer. The first thing you should do is to ask the customer if any other liens exist. In addition, you must confirm with the customer that his bank doesn't have a blanket lien on the equipment. The best thing to do, even if you fear it may stop a deal from being made, is to ask the customer's banker if there is a blanket lien on the customer. If the answer is yes, you should get a release from the bank on the particular piece of equipment being traded to you.

Is There a Way to Find this Information Without Annoying my Customer with the Questions?

While asking the customer himself and contacting the bank remains the best method, there are other options. You can subscribe to Nebraska@Online, a website managed by the state of Nebraska that allows you to do UCC filing searches on customers. It is fairly simple to use, with a minimal cost. The domain name for this site is www.nol.org.

The Final Word

Remember, an ounce of prevention is worth a pound of cure. If you take the time and effort to make sure the equipment you trade for has no outstanding liens on it you won't have to worry about the \$10,000 headache you may get if you don't take the time.

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